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No. 47]

NEW DELHI, SATURDAY, NOVEMBER 24, 2001/AGRAHAYANA 3, 1923

इस भाग में भिन्न पृष्ठ मर्यादा दी जाती है जिससे कि यह जसय संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

गृह मंत्रालय
(पुनर्वास प्रभाग)

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3182.— विस्थापित व्यक्ति (प्रतिकार तथा पुनर्वास) अधिनियम, 1954 (1954 की 44) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री रमेश यादव, निदेशक, गृह मंत्रालय, पुनर्वास प्रभाग को उक्त अधिनियम के द्वारा या उसके अन्तर्गत संयुक्त मुख्य बन्दोबस्त आयुक्त को प्रदान किए गए कार्यों के निष्पादन के उद्देश्य से संयुक्त मुख्य बन्दोबस्त आयुक्त के रूप में तत्काल प्रभाव से नियुक्त करती है।
2. इसके द्वारा पुनर्वास प्रभाग की दिनांक 28-08-97 की अधिसूचना संख्या-1.(5)/93-बन्दोबस्त (क) का अधिक्रमण किया जाता है।

[सं. 1(3)/2001-बन्दोबस्त]
बी.एन. लाहिरी, अवसर सचिव

MINISTRY OF HOME AFFAIRS
(Rehabilitation Division)

New Delhi, the 30th October, 2001

S.O. 3182.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoint Shri R. K. Yadav, Director in the Ministry of Home Affairs, Rehabilitation Division as Joint Chief Settlement Commissioner for the purpose of performing the functions assigned to such Joint Chief Settlement Commissioner by or under the said Act with immediate effect.

2. This supersedes notification No. 1(5)/93-Settlement (A) dated the 28th August, 1997.

[No. 1(3)/2001-Settlement]
B. N. LAHIRI, Under Sec

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3183.—विस्थापित व्यक्ति (प्रतिकार तथा पुनर्वास) अधिनियम, 1954 (1954 का 14) की धारा 34 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा निदेश देती है कि उक्त अधिनियम की धारा 33 के अधीन इसके द्वारा प्रयोग का जाने वाली शक्तियों, श्री रमेश यादव, निदेशक, गृह, मंत्रालय, पुनर्वास प्रभाग द्वारा प्रयोग की जाएंगी।

2. इसके द्वारा पुनर्वास प्रभाग की दिनांक 28-08-97 की अधिसूचना संख्या-1.(5)/93-बंदोबस्त (ख) का अधिक्रमण किया जाता है।

[सं. 1(3)/2001-बंदोबस्त]

बी.एन. लाहिरी, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3183.—In exercise of the powers conferred by Sub-section (1) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby direct that the powers exercisable by it under Section 33 of the said Act shall be exercisable by Shri R. K. Yadav, Director, Rehabilitation Division, Ministry of Home Affairs.

2. This supersedes Rehabilitation Division's Notification No. 1(5)/93-Settlement (B) dated the 28th August, 1997.

[No. 1(3)/2001-Settlement]

B. N. LAHIRI, Under Secy.

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3184.—विस्थापित व्यक्ति (प्रतिकार तथा पुनर्वास) अधिनियम, 1954 (1954 की 44) की धारा 34 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा निदेश देती है कि उक्त अधिनियम की धारा 24 की उपधारा (4) के तहत इसके द्वारा प्रयोग की जाने वाली ये शक्तियाँ, श्री रमेश यादव, निदेशक, गृह मंत्रालय, पुनर्वास प्रभाग द्वारा प्रयोग की जाएंगी।

2. इसके द्वारा पुनर्वास प्रभाग की दिनांक 28-08-97 की अधिसूचना संख्या-1.(5)/93-बंदोबस्त (ग) का अधिक्रमण किया जाता है।

[सं. 1(3)/2001-बंदोबस्त]

बी.एन. लाहिरी, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3184.—In exercise of the powers conferred by sub-Sub-section (1) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby direct that the powers exercisable by it under Sub-section (4) of Section 24 of the said Act shall be exercisable

by Shri R. K. Yadav, Director in the Ministry of Home Affairs, Rehabilitation Division.

2. This supersedes Rehabilitation Division's Notification No. 1(5)/93-Settlement (C) dated the 28th August, 1997.

[No. 1(3)/2001-Settlement]

B. N. LAHIRI, Under Secy.

कार्यक, लोक शिकायत तथा पेशन मंत्रालय

(कार्यक और प्रशिक्षण विभाग)

नई दिल्ली, 12 नवम्बर, 2001

का.आ. 3185.—केन्द्रीय सरकार एतद्वारा दण्ड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री के.सी. गोस्वामी, अधिवक्ता को मुम्बई स्थित केवल केन्द्रीय अन्वेषण द्वाारा के विशेष न्यायालयों में दिल्ली विशेष पुलिस स्थापना द्वारा संस्थित मामलों का संचालन करने के लिए विशेष लोक-प्रशिक्षण नियुक्त करती है।

[संख्या 225/21/2000-ए.बी.डी.-II(i)]

हरि सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSION

(Department of Personnel & Training)

New Delhi, the 12th November, 2001

S.O. 3185.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974), the Central Government hereby appoints Sh. K.C. Goswami, Advocate as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment in the exclusive Central Bureau of Investigation Special Courts at Mumbai.

[No. 225/21/2000-AVD.I(i)]

Hari Singh, Under Secy.

नई दिल्ली, 12 नवम्बर, 2001

का.आ. 3186.—केन्द्रीय सरकार एतद्वारा दण्ड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्रीनवी रविंद्र मन्वरजाल, अधिवक्ता को मुम्बई स्थित केवल केन्द्रीय अन्वेषण द्वाारा के विशेष न्यायालयों में दिल्ली विशेष पुलिस स्थापना द्वारा संस्थित मामलों का संचालन करने के लिए विशेष लोक-प्रशिक्षण नियुक्त करती है।

[संख्या-225/21/2000-ए.बी.डी.-II(ii)]

हरि सिंह, अवर सचिव

New Delhi, the 12th November, 2001

S.O. 3186.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No 2 of 1974), the Central Government hereby appoints Smt. Rabinder Sabharwal, Advocate as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment in the exclusive Central Bureau of Investigation Special Courts at Mumbai.

[No. 225/21/2000-AVD.II(ii)]

Hari Singh, Under Secy.

नई दिल्ली, 12 नवम्बर, 2001

का आ 3187—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थानिक अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 3 द्वारा प्रदत्त शक्तियाँ का प्रयोग करते हुए निम्नलिखित अपराधों को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित किए जाने वाले अपराधों के रूप में विनिर्दिष्ट करती है, नामतः—

(क) खान और खनिज (विनियमन और विकास) अधिनियम, 1957 (1957 का 67) के अधीन दंडनीय अपराध।

(ख) उपर्युक्त खंड (क) में उल्लिखित अपराधों में संश्लेषण अथवा संयोजन प्रदान, दुष्प्रेरण और षड्यंत्र तथा उसी संयोजन के अन्तर्गत में किए गए संयोजन उन्हीं तथ्यों में उद्भूत कोई अन्य अपराध।

[सं 228/15/2001-ए. पी. टी. -II]

हरि सिंह, अवर सचिव,

New Delhi, the 12th November, 2001

S.O. 3187.—In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (Act. No. 25 of 1946), the Central Government hereby specifies the following offences which are to be investigated by the Delhi Special Police Establishment, namely :-

(a) Offences punishable under Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957)

(b) Attempts, abetments and conspiracies in relation to or in connection with the offences mentioned in clause (a) above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/15/2001-AVD-II]

Hari Singh, Under Secy

वित्त मंत्रालय

(प्राधिकृत कार्य विभाग)

(बीमा खंड)

नई दिल्ली, 13 नवम्बर, 2001

का आ 3188—केन्द्रीय सरकार, भारतीय जीवन बीमा निगम धारा 3 और 4 कर्मचारियों (संशोधन, निष्पत्ती और शर्तों का पुनरीक्षण) नियम, 1985 के नियम 13 के उप नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्धारित करती है कि वर्ष 3 और 4 के कर्मचारियों में से प्रत्येक को 1 अप्रैल, 2000 को आरम्भ होने वाली और 31 मार्च, 2001 को समाप्त होने वाली अवधि के लिए बोनस के बदले में सदातः, उक्त उप नियम में अन्य उपबंधों के आधीन रखते हुए, उसके सवलत के 15 प्रतिशत की दर पर किया जाएगा।

[फ. सं 2(15)/96/बीमा-3]

पी.सी. सिंह, अवर सचिव (बीमा)

MINISTRY OF FINANCE

Department of Economic Affairs
(Insurance Division)

New Delhi, the 13th November, 2001

S.O. 3188.—In exercise of the powers conferred by sub-rule (2) of rule 13 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and conditions of service) Rules, 1985, the Central Government hereby determine that, subject to the other provisions of the said sub-rule, the payment in lieu of bonus for the period commencing on 1st day of April, 2000 and ending with 31st March, 2001 to every Class III and Class IV employee shall be at the rate of 15 percent of his/her salary.

[F.No. 2(15)96/Ins.III]

P.C. Singh, Under Secy

वित्त मंत्रालय

(सी.पी.टी. प्रभाग)

नई दिल्ली, 9 नवम्बर, 2001

का आ. 3189—राजनीतिक कोसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41वा) की धारा 2 के अंक (क) के अन्तर्गत में केन्द्रीय सरकार एतद्वारा भारत का द्वाबास वेसि में श्री भरत सिंह रावत महायक का 09-01-2001 में सहायक कामली अधिकारी का कार्य करने के लिए प्राधिकृत करती है।

[सं टी. -4330/1/2001]

योगेश चन्द्र नाथ, उप-सचिव (कानून)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 9th November, 2001

S. O. 3189. -In pursuance of the clause (a) of the Section 2 of the Diplomatic and consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Mr. Bharat Singh Rawat, Assistant in the Embassy of India, Paris to perform the duties of Assistant Consular Officer with effect from 09-11-2001.

[No. T-4330/1/2001]

Y. C. NARANG, Dy. Secy. (Cons.)

नागर विमानन मंत्रालय

नई दिल्ली, 12 नवम्बर, 2001

का.आ. 3190.—पवन हंस हेलीकॉप्टर्स लिमिटेड (पीएचएचएल) के संगम ज्ञापन अनुच्छेद के अनुच्छेद 40 में निहित शक्तियों का प्रयोग करने हुए, 17-9-2001 से तीन महीने की अवधि के लिए अथवा नये पदधारी की नियुक्ति होने तक, जो भी पहले हो, नागर विमानन मंत्रालय में संयुक्त सचिव श्री अनुराग गोयल को पवन हंस हेलीकॉप्टर्स लिमिटेड के अध्यक्ष-संबंध निदेशक का अतिरिक्त भार सौंपने के लिए राष्ट्रपति का कार्यान्तर अनुमोदन प्रदान किया जाता है।

[संख्या एबी-13015/032/2001/-वी.ई.]

पी.एस. राधाकृष्ण, उप सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 12th November, 2001

S.O. 3190.—In exercise of the power conferred by Article 40 of the Memorandum and Articles of Association of Pawan Hans Helicopters Limited (PHHL), ex-post-facto approval of the President is accorded for entrusting the additional charge of Chairman-cum-Managing Director, PHHL to Shri Anurag Goel, Joint Secretary in the Ministry of Civil Aviation for a period of three months with effect from 17-09-2001 or till the appointment of new incumbent, whichever event occurs earlier.

[No. AV. 13015/032/2001-VE]

P. S. RADHAKRISHNA Dy. Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3191—चलचित्र (प्रमाणन) नियमावली, 1983 के नियम-3 के साथ पठित चलचित्र अधिनियम, 1952 की धारा-3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का

उपयोग करते हुए केन्द्रीय सरकार श्री विजय आनन्द को 26 सितम्बर, 2001 से तीन वर्ष की अवधि अथवा अगले आदेशों जो भी पहले हों, तक के लिए केन्द्रीय फिल्म प्रमाणन बोर्ड के अध्यक्ष के रूप में अवैतनिक क्षमता में नियुक्त करते हैं।

[फा.म. 809/1/2001-पफ(सी)]

राजेश शर्मा, डेस्क अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 30th October, 2001

S. O. 3191.—In exercise of the powers conferred by sub-section (1) of section 3 of the Cinematograph Act, 1952 (37 of 1952) read with rule 3 of the Cinematograph (Certification Rules 1983, the Central Government is pleased to appoint Shri Vijay Anand as Chairman, Central Board of Film Certification in an honorary capacity from the 26th September, 2001 for a period of three years or until further orders, whichever is earlier.

[File No. 809/1/2001-F (C)]

RAJESH SHARMA, Desk Officer

नई दिल्ली, 9 नवम्बर, 2001

का.आ. 3192.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिये) नियम, 1976 के नियम 10 के उप नियम (4) के अन्वय में मुख्य लेखा नियंत्रक (सूचना एवं प्रसारण मंत्रालय) के निम्नलिखित कार्यालय को जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिमूर्चित करती है।

वेतन एवं लेखा कार्यालय,

दूरदर्शन, नागपुर

[संख्या ई-11011/1/93-हिन्दी]

समय सिंह कटारिया, निदेशक (राजभाषा)

New Delhi, the 9th November, 2001

S.O. 3192.—In pursuance of Sub Rule (4) of rule 10 of the official language (Use for official purpose of the Union) Rule, 1976, the Central Government hereby notify the following sub-ordinate office of the Chief Controller of Accounts (Ministry of Information and Broadcasting), the staff where of more than 80% have acquired the working knowledge of Hindi.

Pay and Accounts Office,

Doordrshan,

Nagpur

[No. E-11011/1/93-Hindi]

S. S. KATARIA, Director (OL)

श्रम मन्त्रालय

नई दिल्ली, 29 अक्तूबर, 2001

का.प्र. 3193—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमर्ग, केंद्र सरकार सेंट्रल वेयर हाउसिंग कॉर्पोरेशन के प्रबंधन के सदस्य नियोजकी और उनके कर्मचारियों के बीच, अनुबंधन आधारित औद्योगिक विवाद में केंद्र सरकार औद्योगिक अधिकरण जबलपुर के पचाट का प्रकाशित करता है, जो केंद्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[स.एल. 42012/21/92 आर.आर. (एम.)]

बी.एम. डेविड, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 29th October, 2001

SO 3193—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Central Warehousing Corporation and their workman, which was received by the Central Government on 17-10-2001.

[No. L 42012/21/92-IR(M)]

B. M. DAVID, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JABALPUR

CASE NO. CGIT/LC/R/125/94

Presiding Officer: Shri K. M. Rai

Shri Kartik Rao Didhi,
Gram Moring,
Teh. Mahasamund,
Distt. Raipur

Applicant

Versus

The General Manager,
Central Warehousing Corporation
52/53, Amar Niwas,
New Market, TT Nagar,
Bhopal

Non-applicant

AWARD

Passed on this 31st day of October, 2001

1. The Government of India Ministry of Labour order No. I-42012-21/92-IR(Misc.) dated 29-7-94 has referred the following dispute for adjudication by this Tribunal—

‘Whether the action of the management of Central Warehousing Corporation in discharging the services of Shri Kartik Ram Didhi, Warehouse Assistant, Grade II at Raipur w.e.f. 30-1-88 is legal and justified? If not, to what relief the workman is entitled to?’

2. The case for the workman is that he was appointed as Warehouse Assistant Grade II vide order of the management dated 2-6-86 for a period of 3 months on daily rate basis. Thereafter his period of employment was extended from time to time. The management never imposed any condition for clearing the test of typing for regularisation at the time of issuing the appointment order. On this account

his services were terminated vide order dated 30-1-88. Before terminating his services, neither any notice was served on him nor retrenchment compensation was paid to him according to the provisions of Sec. 25 F of the I.D. Act, 1947. The persons junior to him have been regularised by the management and he has not been given any chance for regularisation according to the provisions of I.D. Act. He is thereby entitled to reinstatement with all back wages.

3. The case for the management is that the workman was employed temporarily for a period of 3 months vide order dated 2-6-86. He was not given the regular appointment for regular appointment, the candidate has to go through various selection procedures as per the recruitment rules. The workman was appointed without following the regular selection procedure for the post of Warehouse Assistant Grade II. For regular appointment, the vacancy was vide order dated 11-9-86. The workman applied for regular appointment as Warehouse Assistant Grade II. He was given three opportunities to appear in the test for regular appointment as Warehouse Assistant. The workman could not pass written and typing test. In all the tests, he failed and therefore he could not be selected for regular appointment as Warehouse Assistant Grade II. Initially he was given a temporary employment for a period of 3 months only and therefore as per terms and conditions of the employment his appointment came to an end. The management extended his period of employment in order to give him opportunity to clear the test for regular appointment. The workman could not succeed and therefore his services were dispensed with. He was given retrenchment compensation before terminating his service. His case is not covered under the provisions of Sec. 25 F of I.D. Act, 1947. He cannot claim regularisation as a matter of right. The order of termination passed by the management is just and proper. The workman is not entitled to any relief as claimed by him.

4. The following issues arise for decision in this case and my findings thereon are noted hereinafter—

1. Whether the workman is entitled to regularisation with back wages?

2. Relief and costs?

5. Issue No. 1—Admittedly Shri Rajendra Kumar, Shri Shivarayan, Shri Kumar Khubani, Shri Rajendra Kumar Verma and Miss Nisha Pawaliyya were appointed as Warehouse Assistant Grade II along with the present workman for a period of 3 months only. Their period of employment was also extended from time to time. They also appeared in the test for regularisation to the post of Warehouse Assistant, but they could not succeed. The management terminated their services along with the workman w.e.f. 31-1-88. They raised the similar dispute and the Government of India made a reference vide order No. L 15012/4/88 D-3(B) dated 9-3-89 as under—

‘Whether the action of the management of Central Warehousing Corporation Regional Office Bhopal in terminating the services of Shri Rajendra Kumar, Shri Shivarayan, Shri Kumar Khubani, Shri Rajendra Kumar and Miss Nisha Pawaliyya, Warehouse Assistant Grade II w.e.f. 31-1-88 is justified? If not, what relief the workman is entitled to?’

6. The aforesaid reference was registered as R-63189 and the award was passed by this Tribunal on 9-3-92. This Tribunal clearly held that the workman was not entitled to regularisation. The order of termination was held to be just and proper. This award was never challenged before any competent court. In this way it has become final.

7. The case for the workman is identical to the case of the aforesaid workmen whose dispute was referred to this Tribunal. The facts of both the cases are the same. In view of the award passed by this Tribunal on 9-3-92 the present dispute is also disposed off accordingly. The reasons given by this Tribunal in the previous award are perfectly just and proper and therefore I do not find any reason to differ with the same. The previous award clearly disposes of the present dispute also.

8 Admittedly the workmen could not leave the post for regularisation as Ware House Assistant according to the recruitment rules without clearing the test, no person can claim the right to the said post. The workman was given temporary appointment for a period of 3 months only without following the proper procedure in giving him appointment as Ware House Assistant. He was also given retrenchment compensation prior to termination of his service. In view of all these facts no illegality has been committed by the management in terminating the services w.e.f. 31-1-88. On the reasons stated above it is held that the workman is not entitled to reinstatement with back wages. The order of termination passed by the management on 31-1-88 is just and proper. The workman cannot claim regularisation to the post as a matter of right. This issue is answered accordingly.

9 Issue No. 2 —In view of my findings given on issue No. 1, it is held that the order of termination passed by the management on 30-1-88 is just and proper. The workman is not entitled to regularisation to the post as claimed by him. It is also not entitled to any monetary benefits. The reference is accordingly answered in favour of the management and against the workman.

10 Copy of the award be sent to the Government of India Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2001

सो आ. 3194—आद्य 14 विवाद आद्य 15, 1947 (1947 का 14) के द्वारा 17 के अनुसंधान में, कर्माग्रस्त सरकार पारादीप पोर्ट ट्रस्ट के प्रबन्धन व संचालन विभाग और उनके कर्मचारियों के बीच, अनुसंधान में निर्दिष्ट आद्य 15 विवाद में कर्माग्रस्त सरकार आद्य 15 के अधिकार सुवर्ण के पत्रों का प्रकाशन करना है, जो केन्द्रीय सरकार का 16-10-2001 का फैसला हुआ था।

[एल—33011/7/85-डी IV(ए)]

बी.एम. डेविड, अवर सचिव

New Delhi the 29th October, 2001

SO 3194—In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947) the Central Government hereby lists the award of the Central Government Industrial Tribunal Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Paradip Port Trust and their workman, which was received by the Central Government on 16-10-2001.

[No. L-33011/7/85-D IV(A)]

B. M. DAVID, Under Secy

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—
CUM LABOUR COURT BHUBANESWAR

PRESENT

Shri S. K. Dhal OSJS (Sr. Branch)
Presiding Officer,
CGIT-cum Labour Court,
Bhubaneswar

In INDUSTRIAL DISPUTE CASE NO. 89/2001

Date of conclusion of hearing 24th September, 2001

Date of Passing Award—9th October, 2001

BETWEEN

The Management of Paradip Port Trust
Paradip

Dist. Cuttack

1st Party-Management

AND

The Workmen represented through
Bharatiya Banda Mazdoor Sangha,
Ghanagolia
Paradip Port,
Cuttack

2nd Party-Union

APPEARANCES

Mr. Saroja Kumar Mishra

For the 1st Party-
Management.

Shri Dolagobinda Dash

General Secretary

For the 2nd Party-
Union

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of Sub section (1) and sub section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-33011/7/85-D IV(A), dated 29-12-1989 —

Whether the 3 demands raised by the Bharatiya Bandar Mazdoor Sangh Paradip Port on the Management of Paradip Port Trust, Paradip (as contained in their charter of demands, dated 8-6-1984) are justified? If so what relief are the Workmen concerned entitled to?

2 The case of the 2nd Party-Union may be stated in brief—

On 8-6-1984 a charter of demands was submitted to the 1st Party Management by the 2nd Party Union with a prayer to fulfil the same within 45 days. These are the following demands of the 2nd Party-Union.

I That, the list of cargo handling workers prepared by the Port Trust does not reflect the inter se seniority of the workers. Some of the juniors have been shown as seniors and seniors as juniors in consequence of which certain benefits which the seniors are entitled to as a matter of right have been denied to them,

II Some workers who had been continuously working since beginning of the Port till 1980 have been arbitrarily omitted from the list of workers prepared by the Port Trust in 1980 under the Cargo Handling Scheme. Those workers who have been omitted from the main list are mentioned in Annexure-I to the charter of demands and those workers who have been omitted from the stand-by list have been shown in Annexure II thereof,

III Many old workers who have been put in the category of unlisted workers should have been put in the regular list

According to the 2nd Party Union when the Paradip Port started functioning the workers were being engaged through different contractors and stevedores. There was no systematic method of employment resulting labour unrest, intra-union rivalry which ultimately affected industrial peace and harmony. There was a legislation in 1980 known as Dock Workers (Regulation of Employment) Act applicable to Paradip Port but there was no Dock Labour Board at Paradip to implement the scheme. However in view of Section 42 of the Major Port Trust Act 1963 which empowers the Board of Trustees of the Major Ports to undertake various services mentioned therein the Management of Paradip Port framed Cargo Handling Workers (Regulation of Employment) Scheme 1979. As large number of workers were working under different contractors and Stevedores at the Port, all could not be accommodated under the same Scheme. After series of negotiation discussion with different unions the following criteria were evolved for listing the Labourers —

(a) The various lists submitted by different contractors stevedores and Unions at different times are to be verified and the list common to all the list to be prepared which would be the common list

(b) Persons whose names were in the common list but not working in the Port for more than one year would not be registered.

- (c) Seniority or length of work in this Port would be the criteria for listing in list I or main list. Verification regarding working will be based in the records available with contractors. This criteria was laid down as per the minutes of discussion dated 22.2.1979 and 24.2.1979.

Again a final discussion was held between the parties on 13.3.1979 and it was decided that the list submitted by Unions/Stevedores shall be verified with names of the labourers to whom dock entry permits were issued by the C.I.S.F. As the Management failed to finalise the list effectively keeping in view the criteria several writ petitions were filed before the Honble High Court and finally the Honble Court directed the Port authority to finalise the list by 7.5.1980. It is urged that the aforesaid direction was not complied with by the Management within the stipulated time. The present affected workmen stated to have been worked in the Port under various contractors and stevedores. They formed an organisation known as Orissa Dock Workers Reserve Pool (in short Reserve Pool). The purpose behind the Reserve Pool was to supply labour force to various contractors and stevedores with a view to ensure payment of minimum wages to the workers. Subsequently it is stated that the authorities to the Port Trust having agreed to provide transportation work to the Reserve Pool, directed it to engage the labour who had been working in the Port under different contractors and to recruit outsiders only when the existing labour force was found inadequate. That resulted the workers who had been working under different contractors were employed by the Reserve Pool. Employment cards were issued to the workers as per the direction of the Port Trust authorities. After the cargo handling operation was taken over by the 1st Party Management the reserve pool submitted a list of workers employed by it for inclusion of their names in the list but due to manipulation and being influenced by other Unions excluded many names from the list. However in pursuance to the order dated 7.4.1980 passed by the Honble High Court in O.J.C. No 157 of 1980 the 1st Party-Management issued notices on 11.4.1980 to the Reserve Pool to submit the names of its workers to be included in the list. It is a case of 2nd Party Union that they submitted a list and urged to re-examine the lists already published. The 1st Party Management did not take any step. In the mean while the workers formed a Union known as "Bharatiya Bandar Mazdoor Sangh" to take care the cause of the affected workers who were denied of employment by non-inclusion of their names in the main list as well as stand by list. So the said Union (2nd Party) submitted charter of demand which was admitted to conciliation and the conciliation having been failed the Central Government on consideration of the failure report made this reference for adjudication. The main grievance of the 2nd Party Union is that the names of those workers who are eligible to be enlisted in the main list has been excluded without any reason. They have also claimed for arrear back wages.

3 The 1st Party Management have filed their Written Statement. Their case is that the question of preparation of the list of the cargo handling workers was finalised in the year 1981. So it was not open for the Workmen to raise the same after lapse of time. According to them this being a stale proceeding is not maintainable. It has been further pleaded that in the settlement dated 25.4.1985 the 2nd Party Union having admitted that their claim with the Paradip Port Trust had been settled they are now stopped to raise the self same issue before the Tribunal. As regards the list it is stated that the existing workers in the main list as well as in the subsidiary list are more than the actual requirement as recommended by the Abraham Committee appointed by the Government of India. Moreover when the demands have been made by the different Unions controlling the existing cargo handling workers for complete the present demand made by the 2nd Party Union is uncalled for. The demand for de-casualisation of the workers was the subject matter of S.I.P. No. 3276 of 1987 before the Honble Supreme Court. Having heard the parties the Honble Apex Court directed the Central Government to appoint a Committee of the experts with Honble Justice H.R. Khanna (a retired judge of the Supreme Court) as Chairman of the Committee to go into the matter and decide the controversy. So according to the 2nd Party Union in this view of the matter there is no scope for adjudication of the present dispute raised on behalf of the 2nd Party Union. On facts it is submitted on behalf of the 1st Party Management that after preparation of the list of the workers, arrangement

was made in consultation with the major unions and petitioners in O.J.C. No. 157 of 1980 for dividing them into different gangs. The list published in that regard did not reflect the seniority of the workers as because of workers were taken into cargo handling scheme on a single date i.e. on 16.2.1980. So the allegation of the workmen that one Sashi Bhusan Padhiary and Surendra Behera who were previously placed in Gang No. 23 have been shifted to Gang No. 43. The Management can not change the arrangement already made because it would lead to a unsettled working system. Regarding exclusion of names of the workers from the cargo handling scheme it is pleaded that conditions/qualifications for enlisting the workers in the scheme have been provided on the basis of different minutes of discussions held between the parties. One of such conditions is that a person claiming to be enlisted in such scheme must have worked in the Port for sufficient period prior to 1.11.1977. Keeping in view the criteria the list was prepared and finalised limiting the strength of workers to 1700. The 1st Party Management further submitted that no alteration or addition of the list could be made in view of the specific direction of the Honble High Court of Orissa in two writ petitions namely O.J.C. No. 2276 of 1985 and 259 of 1986. The Honble Court were pleased to direct the 1st Party Management shall not enlist any other workers in the main list until the stand by list in question is exhausted. The 1st Party Management has strongly pleaded that the present affected workers had not worked in the Port for a sufficient period prior to 1.11.1977 so their names can not be enlisted.

4 In view of the above pleadings of the parties the following issues have been settled —

- I Whether the reference is maintainable?
- II Whether the disputes which have been referred for adjudication are Industrial Disputes within the meaning of the I.D. Act?
- III Whether the demands made by the Bharatiya Bandar Mazdoor Sangh which are referred for adjudication are bad on the ground that those have become stale?
- IV Whether all the disputes referred for adjudication have been settled in I.D. Misc. Case No. 5/83 before the Presiding Officer Labour Court Bhubaneswar?
- V Whether the demands made by the workmen as contained in their Charter of demand dated 8.6.1984 are justified?
- VI To what relief if any the Workmen are entitled?

5 The 2nd Party Union have examined 10 witnesses and have exhibited a number of documents where the 1st Party-Management has examined only one witness. They have also placed reliance on some documents.

6 Before going to the merits of the case some admitted facts are to be mentioned here. Award was passed by the Presiding Officer Industrial Tribunal on 24.1.1992. In that Award all the issues were answered in favour of the 2nd Party Union. The Tribunal had passed an order to enlist 78 persons in the Main list and 78 persons in the subsidiary list. The Tribunal while passing the Award had directed for payment of wages for 15 days in average per month to the workers indicated in Annexure I of the Charter of demand (Ext. 13) from 20.8.1988 the date of which the 1st Party Management published a fresh list of workers after making verification and compliance of the direction of the Honble Court passed in O.J.C. 157/80. The Award of the Tribunal was challenged by the 1st Party Management before the Honble High Court in O.J.C. 4091 of 1992. The Honble High Court of Orissa was pleased to set aside the Award passed by the Presiding Officer Industrial Tribunal so far as the direction was given to the 1st Party Management to enlist the 156 workers shown in Annexure I and II to the Charter of Demand (Ext. 13). The Honble High Court was also pleased to set aside the order of the Tribunal for payment of wages for 15 days in average per month to which all the workers indicated in Annexure I to the Charter of demand from 20.8.1981. While setting aside the Award of the Tribunal the Honble High Court was pleased to further order that the matter be reconsidered by the Tribunal in the light of the observations made. The parties were also given opportunity to adduce ad-

ditional evidence if they so desire on the question to enlistment. It may be stated here that some person appeared before the Hon'ble High Court in O.J.C. 80 and 81 of 1994 claiming themselves to be the workers whose names were not enlisted. The Hon'ble High Court were pleased to direct that they should appear before the Tribunal to raise their grievance. The order in O.J.C. 4091/1992 was passed by the Hon'ble High Court on 26-11-1996. On receipt of the direction from the Hon'ble Court, both the parties were given opportunity to adduce additional. In pursuance of the said direction no further evidence was adduced on behalf of the 2nd Party-Union. The Management has examined one witness on 30-10-1998. The persons who had appeared before the Hon'ble Court in O.J.C. 80 and 81 of 1994 did not appear before this Tribunal to raise their grievance in spite of direction of the Hon'ble Court and issuance of notice from the Tribunal.

7. After remand order of the Hon'ble Court a joint verification has been made regarding enlistment of the workers by both the parties by the order of the Tribunal and the said joint verification report has been filed which has been exhibited in this case as Ext. 22. The representative of the Management and the representative of the Union have signed in the said joint verification report. No objection has been raised on the joint verification report (Ext. 22) filed before the Tribunal.

ISSUE No. I & II

FINDINGS

8. In my opinion, no discussion is necessary in respect of these two issues. Both the issues were answered in favour of the Union by the Tribunal. Though the Hon'ble Court did not agree with the reasons given by the Tribunal but were pleased to confirm the findings of the Tribunal that, the disputes raised come within the definition of the Industrial Dispute and so the reference is maintainable. In view of the observations of the Hon'ble Court, I am of the opinion that no further discussion is necessary. Hence Issue No. I & II are answered in favour of the 2nd Party-Union.

ISSUE No. III

9. Coming to this Issue, same type of submission has been made before the Tribunal as done earlier before the Presiding Officer, Industrial Tribunal. It is submitted on behalf of the 1st Party-Management that since Paradip Port Trust Cargo Handling Workers (Regulation of Employment) scheme was framed in the year 1979 and the main list as well as subsidiary were published in the year 1980 the present dispute which was raised in the year 1989 has become stale, according to the 1st Party-Management the dispute ought to have been raised within three years from the date of the publication of the list and the same having not been done the decision in the present case if at all goes in favour of the affected workers it would amount to non-settling of the dispute. On the other hand Mr. Dolagobinda Dash, representative of the 2nd Party-Union has strongly urged that, the Tribunal while passing Award did not accept the submission made on behalf of the 1st Party-Management. Moreover, when the said findings of the Tribunal has not been set aside by the Hon'ble High Court while remanding the case it would be presumed that the findings of the Tribunal, that the proceeding is not a stale proceeding can not be re-agitated again on behalf of the 1st Party-Management. No doubt no specific objection has been made by the Hon'ble Court in respect of the Issue. While remanding the matter the Hon'ble High Court were pleased to direct to reconsider the question of enlistment of 156 workers in the light of the observations made in the judgement. So in that case I agree with Mr. Dolagobinda Dash that it would be presumed that the findings of the Tribunal that the proceeding is not a stale proceeding has not been set aside and this Tribunal is not required to re-examine the said Issue again. So this Issue is also answered in favour of the 2nd Party-Union.

ISSUE No. IV

10. As far as this Issue is concerned the findings of the Tribunal has not been set aside by the Hon'ble Court while remanding the case. So in that case, the Misc. Case No. 5/83 which was filed under section 33-C (2) of the Industrial Dispute Act was for claim of money. This Misc. Case has got no relevancy for the present reference. In my opinion, the present dispute having not been the subject matter in the aforesaid Misc. Case No. 5/83 the Workmen are not estopped to raise the same. Hence, this Issue is also answered in favour of the 2nd Party-Union.

ISSUE No. V

11. This Issue is the main Issue. It is the case of the 2nd Party-Union, that the names of total number of 156

workers as per Annexure I and II to the Charter of Demand (marked as Ext.-13) have been omitted from the main list as well as from the subsidiary list by the 1st Party-Management. That apart, the inter-se-seniority of the workers whose names find place in the list has not been maintained. On the other hand it has been submitted on behalf of the 1st Party-Management that in view of the criteria fixed between the parties the names of 156 workers as per Annexure I and II could not be listed as they have not fulfilled the criteria. The Tribunal while passing an Award on 24-1-1992, accepted the case of the workmen and directed to list the 156 workers as per Annexure-I and II. While accepting the case of the Union, the Tribunal had relied upon the oral evidence adduced on behalf of the Union, notice to the reserve pool (which is now called as Bharatiya Bandar Mazdoor Sangh), the list of workers submitted by the Union under Ext.-10 and letter of the Management which has been exhibited as Ext-6 and the employment pass which has been exhibited as Ex-15 series. The Hon'ble Court while remanding the case have been pleased not to accept the findings of the Tribunal in this regard. The following observations have been made by the Hon'ble Court in Para-34 of the order, dated 26-11-1996, passed in O.J.C. No. 4091/96.

"This brings us to the question whether or not the Industrial Tribunal was justified in ordering enlistment of 78 persons in each list, the main list and the subsidiary list. It is an admitted position that enlistment of workers in the main and subsidiary lists was not automatic. It has to be on the basis of verification of base records and subject to the concerned employee fulfilling the criteria that was agreed upon. It is the case of the management that the enlistment was strictly on that basis. Also it can not be denied rather it is an admitted position that in the petitions which were disposed of earlier this court had also directed the authority to consider the case of an employee for enlistment on verification of relevant base records subject to fulfilment of the conditions and qualifications, or in other words the criteria laid down in the scheme. Reference to these petitions has been made in the earlier part of this judgement. We, therefore, fail to understand as to how in the absence of verification of the base records and without caring to see whether or not said 156 persons whose enlistment has been ordered by the Tribunal fulfilled the required criteria, a direction was issued by the Tribunal for enlistment of these persons, though for the purpose of seniority it required the petitioners to fix the same on the basis of the base records. As admitted, enlistment was to be in terms of the scheme and in accordance with the conditions and criteria agreed upon and the same was also accepted by this court in the earlier petitions, we feel that the Tribunal was not justified in completely ignoring the same. The Tribunal could not deviate as it would amount to laying down new criteria which may give rise to various complications including the fresh unrest among the workers in the subsidiary list which was prepared earlier and which in terms of this court's order in OJC No. 2276 of 1985 and OJC No. 259 of 1986 was to be first exhausted before any further enlistment in the main list. No doubt, a reference has been made to the documents (Ext. 15 series) but they do not indicate that the said employees were in fact working for a fairly long period prior to the cut off date i.e. 1-11-77. These documents could not be taken to be the substitute for the base records and the agreed upon criteria. Further the Tribunal completely overlooked the fact that the verification was to be on the basis of the base records of the CTSF and not the records of some union which may not even be in existence at that point of time. In view of the discussions made above the direction of the Tribunal ordering enlistment of 78 persons in the main list (List-I) and 78 persons in the subsidiary list (List-II) can not be substantiated"

12. From this it would appear that the materials available on behalf of the 2nd Party-Union were not sufficient to come to the conclusion that the workers who have claimed to be listed in fact were working for a fairly long period prior to the cut off date i.e. 1-11-1977. In my opinion that, is

why the Hon'ble Court were pleased to direct both the parties to place additional evidence. But the 2nd Party-Union has not availed that opportunity though the 1st Party-Management has adduced the evidence of one witness. On the other hand both the parties had agreed for a joint verification and accordingly after verification a joint report has been filed before the Tribunal, which has been exhibited as Ext-22. Ext-22 does not support the case of the 2nd Party-Union because no materials were found on verification that the workers claim to be listed worked for a fairly long prior to the cut off date i.e. 1-11-1977.

13. Mr. Dolagobinda Dash, representative of the 2nd Party-Union while making argument has advanced a lengthy argument touching upon the social justice, miseries of the workmen and delay in disposal without coming to the actual issue. In the course of the argument, I asked Mr. Dash to place any materials either oral or documentary to satisfy the Tribunal that the workers who had claimed to be listed had worked for considerable period prior to the cut off date i.e. 1-11-1977. I also asked Mr. Dash to explain this Tribunal whether he had taken the opportunity to adduce additional evidence for which direction was given by the Hon'ble Court. But, Mr. Dash has tried to establish his case on the available materials. According to him no additional evidence is necessary in support of their case. He has tried to satisfy this Tribunal relying upon the oral evidence adduced on behalf of the 2nd Party-Union and the certified copy of the order passed in Misc. Case 5-13 (exhibited in this case as Ext.-20) and non-appearance of the Parties in OJC No. 80/94 and 81/94.

14. First, I will come to the oral evidence. Out of nine witnesses examined on behalf of the 2nd Party-Union, the Hon'ble Court has been pleased to observe that the evidence of the Witness No. 1 and Witness No. 2 are not relevant for the purpose of answering the reference. The other witnesses have stated like a parrot, that they have worked for a considerable period, prior to 1-11-1977. The Hon'ble High Court have been pleased to make the following observations as regards oral evidence is concerned which has been produced by the 2nd Party-Union.

"The evidence of Witness No. 1, Srikantha Parida, and Witness No. 2, Sridar Jena, is not relevant as it does not relate to demand No. 2 raised on behalf of the workmen. Witness No. 3, Srinar Mahalik, Witness No. 4, Sanatan Roul, Witness No. 5, Purna Parida, Witness No. 6, Budhiram Ghaedi, Witness No. 7, Prahalad Prusty and Witness No. 8, Baidyanath Prusty stated they were working in the Port since long and these necessary documents were not with them as these had been handed over to the Union."

15. So in view of the above observations the oral evidence adduced on behalf of the 2nd Party-Union was not sufficient to establish that the workers claimed to be listed had worked for a considerable period prior to 1-11-1977. Mr. Dash who had been examined as Witness No. 9 on behalf of the 2nd Party-Union had referred to Ext-15 series (which are the employment cards) to satisfy the Tribunal that the workers had worked for a considerable period prior to 1-11-1977. Though the Tribunal accepted those documents but the Hon'ble High Court have been pleased to observe that those documents did not indicate that the said employees were in fact working for a fairly long period to the cut off date i.e. 1-11-1977. So in my opinion, the submission made on behalf of the 2nd Party-Union by Mr. Dash that the oral evidence is sufficient to accept the case of the 2nd Party-Union can not be accepted.

16. Coming to the non-appearance of the parties, who were appeared before the Hon'ble High Court in OJC 80/94 and 81/94, it is submitted by Mr. Dash, who is appearing on behalf of the 2nd Party-Union, that the parties who claimed to be the workers to be listed and fought before the Hon'ble High Court in OJC 80/94 and 81/94 did not appear before the Tribunal and that would go to show that, they had no case and the case of the 2nd Party-Union was established. I am not inclined to accept the submission made by Mr. Dash in this regard. No doubt, some persons appeared before the Hon'ble High Court in OJC 80/94 and 81/94 claiming themselves to be the worker to be listed in the list. The Hon'ble Court while remitting back the Award passed by the Tribunal in the year 1992 directed them to appear before the Tribunal to reargue the matter. Admittedly they have not made appearance before this Tribunal. But that does not mean that the case of the 2nd Party-Union has been established. The

dispute has been raised at the instance of the 2nd Party-Union. In my opinion, the initial burden lies on them to establish their case without taking advantage of the weakness of the others. So the non-appearance of the parties of OJC 80/94 and 81/94 would not be a ground to presume that the case of the 2nd Party-Union has been established.

17. Coming to the third submission made on behalf of the 2nd Party-Union that in view of the compromise made between the parties in Misc. Case No. 5/83, it would be presumed that the 1st Party-Management has accepted that the workers who had claimed to be listed had worked for a considerable long period prior to 1-11-1977. The Misc. Case 5/83 was filed claiming for monetary relief by some workers. That was compromised between the parties. The Tribunal while passing Award in the year 1992 refuse to consider this Misc. Case on the ground that this has got no relevancy for answering the reference. I am also of the same view. Even if the Ext-14/2 series are taken into consideration I am of the opinion that those documents did not support the case of the 2nd Party-Union. In the last claims have been made for the year 1977, 1978, 1979 onwards. Those documents did not indicate that a particular person had worked for a considerable long period prior to 1-11-1977. For example claim has been made in respect of one worker namely Shri B. Ghadai, at Sl. No. 1 for Rs. 6 for the year 1977. So that is not sufficient to say that Shri B. Ghadai had worked for a considerable long period prior to 1-11-1977. So in my opinion, the Ext-14 series on which much reliance has been placed by Mr. Dash is not sufficient to satisfy the Tribunal that the workers who had claimed to be listed had worked for a considerable period prior to cut off date 1-11-1977.

18. Lastly, a faint attempt has been made by Mr. Dash that award be passed to enlist the names of the workers as per Annexure I and II as per Ext-7/1. The Tribunal while passing an Award in the year 1992 have also referred to Ext-7/1 in Part-13. As per Ext. 7/1, discussion was held on 25-3-1989 and it was decided that the workers must have worked in loading and unloading at the Port prior to 1-11-1977. Mr. Dash has submitted that, as per Ext-7/1 it was decided that, the workers who have worked after 1-11-1977 also to be listed. Clause—C of the proceeding of the meeting (Ext-7/1) envisages that, as regards to priority of listing of workers it was agreed upon by all the Unions that the priority would be given to the persons who are actually working in the Port at present as per their seniority i.e. length of their working period in the Party. I am unable to agree with Mr. Dash that this Clause—C provides to list the workers who have worked after cut off date i.e. 1-11-1977.

19. As per my above discussion, I am of the opinion, that the 2nd Party-Union has failed to establish by producing either oral or documentary evidence that the workers as per Annexure-I and II had worked for a considerable period prior to 1-11-1977 to be enlisted in the main and subsidiary list. Hence, this issue is answered against the 2nd Party-Union.

ISSUE NO. VI.

20. In view of my findings given in respect of Issue No. V the Workmen are not entitled to any relief.

21. Reference is answered accordingly.

S K DHAL, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार दिग्गो मार्टिन ऑफ बी.एम.पी. के प्रबंध-तंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जवल्पुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[सं.एल-29012/138/98-आई.आर. (एम)]

बी.एम. डेविड, अवसर सचिव

New Delhi, the 29th October, 2001

S.O. 3195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Dalli Mines of BSP and their workmen which was received by the Central Government on the 17-10-2001.

[No. L-29012/138/98/IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR, M.P.

CASE NO. CGIT/LC(R)(89)/99

Shri Lakhan Lal, S/o.
Anjori,
C/o Shri Sahadev Sahu,
Tabler Set,
At & PO Dalli-Rajhara
Durg

Workman.

Vs.

1. The President, Shramik
Sahakari Samiti Ltd.,
PO : Dalli-Rajhara,
Durg
2. The Mines Manager,
Dalli Mines of BSP,
PO : Dalli Rajhara,
Durg.

Management.

AWARD

(Passed on this 25th Day of Sep. 2001)

1. The Government of India, Ministry of Labour, vide order No. L-29012/138/98/IR(M), dt. 5-2-1998, has referred this dispute for adjudication as under :

"Whether the action of the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli Mines in terminating the services of Shri Lakhan Lal w.e.f. 8-5-1997 is justified? If not, to what relief he is entitled?"

2. The management has objected the maintenance of this reference before this Tribunal. Their contention is that the workman was employed by Shramik Sahakari Samiti Ltd., Dalli-Rajhara. His services were terminated w.e.f. 8-5-1997. He challenged his order of termination before the Asstt. Registrar, Co-operative Societies, Durg, under the Provisions of M.P. Co-operative Societies Act. The provisions of I.D. Act shall not apply in the present case. The workman had the remedy under the provisions of M.P. Co-operative Societies Act only and not under the provisions of I.D. Act 1947

3. It is admitted fact that the workman was never employed by the Bhilai Steel Plant. He was employed by the management Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli-Rajhara Mines. In this way, there was no relationship of Master and Servant between the management of BSP and the workman. He was the employee of Shramik Sahakari Samiti Ltd. He had the remedy to challenge the order of dismissal from services under the provisions of MP Co-operative Societies Act and not under the provisions of I.D. Act 1947 as laid down by the Supreme Court in RC Tiwari vs M.P. Raiya Sahakari Mktg. Federation Ltd., (1997) 5 SCC, page 125

4. In view of the facts stated above, it is held that this reference is not maintainable before this Tribunal. The workman is not entitled to any relief under the provisions of I.D. Act 1947. Reference is answered accordingly.

5. Copy of the award be sent to the Government of India, Ministry of Labour, New Delhi, for publication as per rule.

K. M. RAI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2001

का.अ. 3196:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली माईनिंग ऑफ वी.एस.पी. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण जदलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[सं.एल-29012/136/98-आई.आर. (एम)]
बी.एम. डेविड, अवर सचिव

New Delhi, the 29th October, 2001

S.O. 3196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of DALLI Mines of BSP and their workmen which was received by the Central Government on 17-10-2001.

[No. L-29012/136/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR, M.P.

Case No. CGIT/LC(R)(88)/99

Shri Sunder Lal,
S/o. Shri Ram Prasad,
C/o. Sahadev Sahu,
Tabler Set,
At & PO : Dalli-Rajhara,
Durg.

.. Workman.

VS

1. The President, Shramik Sahakari
Samiti Ltd., PO : Dalli-Rajhara
Durg. .. Management.

2. The Mines Manager, Dalli Mines
of BSP, PO : Dalli-Rajhara, Durg.

AWARD

(Passed on this 25th Day of September, 2001)

1. The Government of India, Ministry of Labour, vide order No. L-29012/136/98/IR (M) dt. 5-2-1999 has referred this dispute for adjudication as under :—

"Whether the action of the management
of Shramik Sahakari Samiti Ltd. a

contractor of BSP at Dalli Mines in terminating the services of Shri Sunder Lal w.e.f. 8-5-1997 is justified ? If not, to what relief he is entitled ?”

पचाट का प्रमाणित करती है, जो केन्द्रीय सरकार को 17-10-2001 को पता हुआ था।

[न.एन 29012/33/92-आईआर(एम.)]
बी.एम. डेविड, अवर सचिव

New Delhi, the 29th October, 2001

S.O. 3197.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management B.I.O.P. and their workman, which was received by the Central Government on 17-10-2001.

[No. L-29012/33/92-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR

CASE NO. CGIT/LC/R/120 93

Presiding Officer : Shri K. M. Rai

Smt. N. A. Lal,
Through General Secretary,
Samyuktha Khadan Mazdoor Sangh (AITUC),
PO Kirandul,
Distt. Bastar. . . Applicant.

Versus

The General Manager,
B.I.O.P.,
Dep. No. 14, Kirandul,
Distt. Bastar. . . Non-applicant.

AWARD

Passed on this 3rd day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-29012/33/92-IR (Misc.) dated 3-6-93 has referred the following dispute for adjudication by this tribunal :

“Whether the action of the management in respect of Smt. N. A. Lal T. No. 12046 is fair and justified ? If not, what relief the workman is entitled ?”

2. The management has objected the maintainance of this reference before this Tribunal. Their contention is that the workman was employed by Shramik Sahakari Samiti Ltd. Dalli-Rajhara. His services were terminated w.e.f. dt. 8-5-1997. He challenged his order of termination before the Asstt. Registrar, Co-operative Societies, Durg, under the Provisions of M. P. Co-operative Societies Act. The Provisions of I.D. Act shall not apply in the present case. The workman had the remedy under the provisions of M. P. Co-operative Societies Act only and not under the provisions of I.D. Act 1947.

3. It is admitted fact that the workman was never employed by the Bhilai Steel Plant. He was employed by the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli-Rajhara Mines. In this way, there was no relationship of Master and Servant between the management of BSP and the workman. He was the employee of Shramik Sahakari Samiti Ltd.. He had the remedy to challenge the order of dismissal from services under the provisions of M. P. Co-operative Societies Act and not under the Provisions of I.D. Act 1947 as laid down by the Supreme Court in RC Tiwari Vs. M. P. Rajya Sahakari Mktg. Federation Ltd., (1997) 5 Sc. page 125.

4. In view of the facts stated above, it is held that this reference is not maintainable before this Tribunal. The workman is not entitled to any relief under the provisions of I.D. Act 1947. Reference is answered accordingly.

5. Copy of the award be sent to the Government of India, Ministry of Labour, New Delhi, for publication as per rule.

K. M. RAI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2001

का.आ. 3197.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.आई.ओ.पी. के प्रबंधन के संबद्ध निरोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के

2. The workman remained absent inspite of service of notice on her. She does not appear to be interested in pursuing her claim. In view of this fact, no dispute exists between the parties in the present case.

3. On the above said reasons, it is held that no dispute exists between the parties. Hence No Dispute Award is passed. The workman is not entitled to any relief as claimed by her.

4. Copy of the award be sent to the Government of India Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2001

का.आ. 3198---औद्योगिक विवाद अधिनियम, 1947 (1917 का 11) की धारा 17 के अनुसरण में केंद्रीय सरकार कूद्रेमुख आयरन ओर को के प्रवक्ता के पक्ष में निरोजका और उनके कर्मकारों के बीच, अनुवध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक विचारण बैंगलूर के पक्ष में प्रवक्ता करती है, जो केंद्रीय सरकार को 23-10-2001 को प्राप्त हुआ था।

[स एन-26012/22/93-आई.आर. (एम.)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 29th October, 2001

SO 3198—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kudremukh Iron Ore Co and their workman, which was received by the Central Government on 23-10-2001

[No L-26012/22/93 IR(M)]

B. M DAVID, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT "SHRAM SADAN", III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 9th October, 2001

PRESENT.

Hon'ble Shri V. N Kulkarni, B Com, LLB, Presiding Officer

CGIT CUM-LABOUR COURT, BANGALORE

C. R. No 73/94

I PARTY

The President,
Kudremukh Shram Shakthi
Sangathan,
B-398, Sector II,
Kudremukh-577142
(Advocate-Padkhe)

II PARTY

The Chairman and Managing
Director,

Kudremukh Iron Ore Ltd,
Koramangala,
Bangalore-560034
(Advocate-K. Kesturi)

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No L-26012/22/93 IR(Misc) dated 25th August 1994 for adjudication on the following schedule :

SCHEDULE

'Whether the management of Kudremukh Iron Ore Co Ltd is justified in reducing the pay to the minimum of the scale in respect of S/Shri S. Venkatraya, Suryakanth Chante and S R Kubera Setty? If not, to what relief they are entitled?'

2 First party was working with the Second Party. The management reduced the pay of the first party union workmen S/Shri S. Venkatraya, Suryakanth Chante and S R. Kubera Setty Therefore this dispute is raised by the union

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party union workmen, S/Shri S. Venkatraya, Suryakanth Chante and S R. Kubera Setty are as follows .

5. The management is in the habit of suppressing trade union activists on one pretext or the other and never hesitated to curb them by hoisting false charges and the personnel department considered this as a primary function. The Second Party influenced the company doctor to give unfit certificate to Shri Suryakanth Chante on 13-6-1989 for a period of one month from 5-6-1989 to 4-7-1989, though worked upto 20-6-1989 Workman, Shri Venkatraya took the cause of Shri Suryakanth and that made the second party to influence the doctor to get a fitness certificate on 20-6-1989 and the salary for 7 days were paid to Shri Suryakanth due to the efforts of Shri Venkatraya

6. It is mainly contended by the union that the management was unsuccessful in preventing Shri Venkatraya to perform his trade union duties and further was made to reinstate Shri Venkatraya in October 1984 by withdrawing the order of dismissal passed against him though the second party undertook before the Industrial Tribunal, Bangalore that Shri Venkatraya will be reinstated with all the consequential benefits in CR No 5/1983 it did not keep up the undertakings and the first party raised an Industrial Dispute in this connection Further Shri Venkatraya continue to assist the employees who were in difficulties and who were being harassed by the second party.

7 Enquiry was conducted by the management and the enquiry is not and fair proper The action of the management in reducing the pay to the minimum of the scale in respect of 3 workmen is not correct The union has pleaded to pass award in its favour

8. The case of the Second Party in brief is as follows :

9 All the allegations made by the union in the Claim Statement against the management are not correct Shri Suryakanth Chante developed nervous problems and he was advised by the Company's doctor to take rest Shri Venkatraya was reinstated on 26-10-1984 based on the joint memo of compromise filed before the Industrial Tribunal, Bangalore Its consequential benefits are stated in CR No 5/83.

10 It is the further case of the management that on 28-7-1989 Shri S Venkatraya, St No 2389, Technician, Gr 1, Post Facilities Department who was in General Shift approached Shri M N Murthy, Assistant Superintendent around 930 a.m and informed him that he and his colleagues would be stopping the plant with a view of disrupting production and ship loading activities from 1 P.M. on 28-7-1989 against the recognised union When Shri Murthy, Assistant Superintendent questioned him the reason for the proposed stoppage of the plant, Shri Venkatraya did not give him any specific reason and said that Shri Murthy would come to know about it in course of time.

11 On 28-7-1989 around 1 P.M., the CB 81 and Main slurry pump No PS 121 stopped and consequently all production activities in the plant came standstill. It was only the instruction from Shri S Venkataraya to disrupt the production. The plant was stopped due to the stoppage of PS 121 and CB 81 by Shri Kubera Shetty and Shri Suryakanth Chante intentionally at the instance of Shri S Venkataraya. The workmen have contravened the standing orders.

12 Enquiry was conducted and the same in fair and proper Management for these reasons and for some other reasons has played to reject the reference.

13 MW1 was examined S Venkataraya got examined himself SR Kuber Shetty was also examined.

14 It is seen from the records that this Tribunal by its order dated 19th April 1999 passed orders holding that the Domestic Enquiry is fair and proper. After this I have heard the learned counsel appearing for the parties and I have carefully perused the records and the enquiry proceedings.

15 First party union workmen have filed written brief. According to the facts of the case as alleged by the management misconduct is not proved by the management and the finding of the Enquiry Officer is perverse. The management has failed to establish that the workmen of the union have intentionally stopped the plant. The finding given by the Enquiry Officer is not based on the available clear evidence. The allegations made by the management are not true. Of course Domestic Enquiry is held as fair and proper but on perusing the enquiry proceedings and the finding of the enquiry officer I am of the opinion that the finding is perverse and the same is not correct. I have carefully considered the written arguments filed by the learned counsel appearing for the management.

16 I have carefully read the decision 1998 LLR 190 of Madras High Court. The facts of the above case are quite different from the facts of the case on hand. From the material before us it is clear that here is victimisation and unfair labour practice with the workmen of first party union. The misconduct is not properly proved.

17 Considering all this I am of the opinion that the action of the management is not correct and accordingly I proceed to pass the following order:

ORDER

The reference is allowed. The order of reducing the pay to the minimum of the scale in respect of S Shri S Venkataraya, Suryakanth Chante and S R Kubera Setty is not correct and the same is set aside. Accordingly the reference is disposed off with the direction to the management not to reduce the scale of pay of the first party union workmen.

(Dictated to PA, transcribed by her corrected and signed by me on 9th October, 2001)

V N KULKARNI Presiding Officer

नं. दि. १०, २९ अक्टूबर, २००१

का. आ. 3199—आयोगिक विचार आदेशिका 1947 (1947 का 14) की प्रा. 17 के अन्वये, केन्द्रिय सरकार मलाजखंड कापर प्रोजेक्ट के प्रवर्धन के संबंध निरोजका आर नके बनारोव सिच, अनवर से विदित आयोगिक विचार में केन्द्रिय सरकार जादवाप रातारण, जवतपुर के पचास का पचासित प्रस्ताव, आ केन्द्रिय सरकार का 17-10-2001 का प्र. नं. हुआ।

[स. नं. 12012/95/86-D III-(वी)]

वा. प. डेविड, न्याय निवेदन

New Delhi, the 29th October, 2001

SO 3199 - In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Malajkhind Copper Project and their workman which was received by the Central Government on 17-10-2001

[No L-12012/95/86 D III (B)]

B M DAVID, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT JABALPUR

CASE NO CGIT/LC/R/160/87

Presiding Officer Shri K M Rai
The President,
M C P Employees Union,
PO Malajkhind,
Distt Balaghat (MP)

Applicant

Versus

The Dy General Manager,
Malajkhind Copper Project,
PO Malajkhind,
Distt Balaghat (MP)

Non Applicant

AWARD

Passed on this 5th day of October, 2001

1 The Government of India, Ministry of Labour vide order no L-12012/95 86-D III(B) dated 21-8-1987 has referred the following dispute for adjudication by this Tribunal —

Whether the action of the management of Malajkhind Copper Project of HCL Ltd Malajkhind in imposing the punishment of stoppage of one increment with cumulative effect on Shri R C Biswas Heavy Vehicle Driver is justified? If not, what relief is the workman entitled to?

2 The case for the workman is that he is the General Secretary of M C P Employees Union (M C P U) in Malajkhind Copper Project. Being the office bearer of the Union, he is actively involved in the Trade Union activities and putting grievances of the workers of the project to the management. Because of his activities the management was annoyed with him. On 26-9-1984, he was issued with a false chargesheet regarding leading a demonstration of about 80 workers at about 4 P.M. after the close of his duty and proceeding toward township through enclosure of the administrative building. When the demonstration reached the water treatment plant at about 4.15 P.M., the workman stopped the ambulance from proceeding further causing inconvenience to the patient Vipatalal who was in the ambulance. He denied the charges levelled against him by his explanation dated 3-5-1984. The management did not accept his reply and decided to hold the D.F. against him. The charges levelled against him were vague and therefore no proper reply could be submitted. The charges did not constitute the misconduct within the meaning of standing orders applicable to the company and holding any demonstration after office hours is covered under the trade Union activities. The Enquiry Officer conducted the enquiry in utter disregard of the principle of natural justice. The Enquiry Officer acted as a prosecutor and therefore the Enquiry was not conducted in a fair and impartial manner. The charges were not proved from the evidence on record available during the Enquiry Proceedings. The Enquiry Officer has wrongly held the charges proved against him. His report is perverse and based on substance. The copy of the Enquiry Report was not supplied to him. The Disciplinary Authority mechanically accepted the report without applying his mind. The imposition of punishment of stoppage of one increment with cumulative effect deserves to be quashed. He is entitled to all the monetary and other consequential benefits.

3 The case for the management is that on 24-5-1984, the workman led the demonstration of workers in the premises of the company and during the demonstration, he misbehaved with other employees. It was a serious misconduct under the provisions of certified standing orders applicable to the company. The chargesheet was served on the workman and his reply was found unsatisfactory. The Department I Enquiry was conducted against him in just and fair manner and the Enquiry Officer, after considering the material on record, held the charges proved against him.

The workman was given opportunity to defend his case during the enquiry proceedings. He participated in the enquiry proceedings and the evidence was recorded in his presence. The Enquiry Officer has rightly held the charges proved against him. The Disciplinary Authority, after due consideration accepted the report of the enquiry officer and imposed the penalty of stoppage of one increment with cumulative effect on the workman. The order passed by the management is perfectly legal and does not require any interference.

4. The following issues have been framed in this case and my findings thereon are noted hereinafter —

1. Whether the domestic/departamental enquiry is proper and legal?
2. Whether the punishment awarded is proper and legal?
3. Whether the management is entitled to lead evidence before this Tribunal?
4. Whether the termination/action taken against the workman is justified on the facts of the case?
5. Relief and costs?

5. Issues No. 1 and 3

It has already been held by this Tribunal on 13-3-92 that the Departmental Enquiry conducted against the workman is proper and legal and therefore the management is not required to lead any further evidence to prove the misconduct of the workman. In view of this finding, both these issues need no further consideration at all.

6. Issues No. 2 and 4

During the course of DE the management had examined the Police Head Constable Mohd. Yakub who was deputed by the Station House Officer of Police Station, Malajkhand to maintain law and order during the procession of the workers. He had clearly stated before the Enquiry Officer that as per instruction of Station House Officer of Police Station Malajkhand, he went to time office on 24-5-1984 and saw the procession being taken out therefrom. He accompanied the procession upto the water treatment plant of the Project. The procession stopped near the crossing of the road leading to village Pauri. The procession was peaceful and no one indulged in any sort of illegal activities. The procession disbursed at about 5 P.M. He has also clearly stated that no body raised any slogan against the administration of the project. It has also been further stated by him that no one had stopped the ambulance at the said spot. He cleared the crowd on the road and the ambulance was moved without any obstruction. After the procession was over, he went to the police station.

7. The aforesaid statement of Head Constable Mohd. Yakub clearly goes to show that the workman had not indulged in any illegal activities at the time of the procession taken out by the workers of the Malajkhand Project after 4 P.M. He had not raised any slogans against any officer of the project. In view of this clear evidence of Mohd. Yakub the charges levelled against him cannot be held to be proved. The workman never indulged himself in any illegal activities while taking out the procession on the relevant day. In this way the punishment awarded by the management by way of stopping his one increment with cumulative effect is bad in law. This punishment cannot be upheld by this tribunal. Issues No. 2 and 4 are answered accordingly.

8. Issue No. 5

In view of my findings given on Issues No. 2 and 4 it is held that the imposition of punishment of stoppage of one increment with cumulative effect on the workman Shri R. C. Biswas is illegal and it is therefore set aside. The action taken by the management in this connection is unjust and improper. The workman is entitled to the increment with held by the management. This reference is accordingly answered.

9. Copy of the award be sent to the Government of India Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

दि. दिल्ली, 30 अक्टूबर, 2001

का. प्र. 3200—आयोगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अन्वय में, केन्द्रीय सरकार एयरपोर्ट ऑथोरिटी आफ इण्डिया के प्रबंधन में संबद्ध निराजका और उनके वर्तकारों से बीच, अनुबंध में निर्दिष्ट आयोगिक विवाद में केन्द्रीय सरकार आयोगिक अधिकरण जयपुर के पचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-2001 को प्राप्त हुआ था।

[स एल-11012/12/2000-आई आर (एम.)]

बी एम. डेविड, सचिव संभव

New Delhi the 30th October, 2001

SO 3200—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court Jaipur (Rajasthan) as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Airports Authority of India, and their workmen, which was received by the Central Government on 30-10-2001.

[No L-11012/12/2000/IR(M)]

B M DAVID, Under Secy

अनुबंध

केन्द्रीय सरकार आयोगिक अधिकरण एवं श्रम न्यायालय, जयपुर

आरक्षण संख्या एल 11012/12/2000-आई आर (एम.) - 8/1/200

प्रकरण संख्या सी जी आई टी / 1/2001

मिरीश तोलनी पुत्र श्री एन डी तालानी, निवासी प्लाट संख्या 3-ए-17, हाउसिंग बोर्ड, शास्त्रीनगर, जयपुर।

—प्रार्थी

वनाम

1. एयरपोर्ट ऑथोरिटी ऑफ इण्डिया, जयपुर बरिष्ठ प्रबंधक जयपुर, एयरपोर्ट प्रोजेक्ट, सी-50 देव नगर, टोक रोड, जयपुर (राजस्थान)।

2. इण्टरनेशनल एयरपोर्ट ऑथोरिटी आफ इण्डिया, जयपुर महाप्रबंधक, (पीपीआर) सहायक एयरपोर्ट, नई दिल्ली

—अपक्षीय

संस्थित

प्रार्थी की ओर से

श्री अरविन्द गुप्ता।

अपक्षीय की ओर से

श्री ओ पी मिश्रालानी

पचाट दिनांक

10-10-2001

पचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद आयोगिक विवाद अधिनियम, 1947 (जिसे बाद में अधिनियम, 1947 कहा गया है) की धारा 10 की उपधारा (1) के खण्ड घ के प्रावधानों के अन्वय में उक्त आदेश के जारि न्यायनिर्णय हेतु निर्देशित किया गया --

"Whether the action of the management of Airports Authority of India, Jaipur in terminating the services of Sh. Girish Totlani Sh. L. D. Totlani was justified? If not, to what relief the workman is entitled and from what date?"

प्रार्थी ने स्टेटमेंट ऑफ क्लेम प्रस्तुत किया, जिसमें उल्लेखित तथ्यों का उल्लेख करना इसलिए आवश्यक नहीं है क्योंकि पक्षकारों के बीच समझौता हो चुका है। दिनांक 30-4-2001 को पक्षकारों ने निम्न समझौता प्रस्तुत किया :—

"1. उपरोक्त कामगार को तत्कालीन आई.ए.ए.आई जयपुर परियोजना, अब ए.ए.आई. (आई.ए.डी.) द्वारा जनवरी, 1993 से फरवरी, 1997 तक (अर्थात् लगभग 4 वर्ष के लिए) काम पर रखा गया था। उन्होंने ए.ए.आई. के मैनेजमेंट से क्लर्क/टाइपिस्ट के रूप में नियुक्ति किए जाने का अनुरोध किया है।

2. जयपुर एयरपोर्ट के संबंध में, अभी हाल ही में नए निर्माण कार्य शुरू किए जाने के फलस्वरूप जयपुर परियोजना में सहायक श्रेणी-3 (क्लर्क/टाइपिस्ट) के कुछ पद मूलभूत हो गए हैं। उपरोक्त याचिकाकर्ता द्वारा की गई सेवा को ध्यान में रखते हुए, मैनेजमेंट समझौते/कोर्ट के बाहर किए जाने वाले निपटारे के रूप में, निम्नलिखित नियमों और शर्तों पर इन्हें सहायक श्रेणी-3 के पदों में से एक पद पर नियुक्त किए जाने हेतु इनके मामले पर विचार करने के लिए नैयाग है :

(ए) मैनेजमेंट नियुक्ति हेतु इनके मामले पर विचार करेगा, बशर्ते कि ये ए.ए.आई. (आई.ए.डी.) के भर्ती एवं पदोन्नति नियमों में किए गए प्रावधानों के अनुसार, पद के लिए निर्धारित कार्य-विनिर्देशनों को पूरा करने हो तथा लिखित परीक्षा/ट्रेड टेस्ट/साक्षात्कार में उत्तीर्ण हो जाएं।

(बी) इनकी नियुक्ति उस तारीख से मानी जाएगी, जिस तारीख को सहायक श्रेणी-3 (क्लर्क/टाइपिस्ट) के रूप में इन्हें नियुक्ति पत्र भेज दिए जाने के पश्चात् ये उसे स्वीकार कर लेते हैं तथा अपना कार्यभार ग्रहण कर लेते हैं।

(सी) ये अपने मामले को केन्द्रीय सरकार औद्योगिक ट्रिब्यूनल में वापस ले लेंगे।

(डी) ये इस बात के लिए कोई दावा नहीं करेंगे कि इन्हें पिछली अवधि में नियुक्ति प्रदान की जाए/नियमित किया जाए अथवा पिछली तारीख से प्राधिकरण के नियमित कार्यचारियों के साथ वेतन में समानता प्रदान की जाए।

(ई) इन्होंने माननीय केन्द्रीय सरकार औद्योगिक ट्रिब्यूनल के समक्ष अपना जो "दावों संबंधी विवरण" प्रस्तुत किया है, उसके आधार पर ये कोई भी

दावा नहीं करने वाला किया भी वास के पात्र नहीं होगा।

(एफ) जयपुर में परीक्षा का आयोजन हो जाने पर अथवा अथवा, ट्रेड प्राधिकरण के नियमों के अनुसार जागरूकता में किसी भी स्थान पर स्थानान्तरित किया जा सकेगा। ये प्राधिकरण में समय-समय पर लागू होने वाले नियमों-विनियमों द्वारा नियंत्रित होंगे।"

3. उपरोक्त समझौते/कोर्ट के दायरे किये जाने वाले निपटारे को, एतद्वारा, माननीय केन्द्रीय सरकार औद्योगिक ट्रिब्यूनल के समक्ष प्रस्तुत किया जाता है। भारतीय न्यायालय द्वारा उपरोक्त का देख लिया जाने के पश्चात् मैनेजमेंट इनकी नियुक्ति के संबंध में कार्यवाही शुरू कर देगा एवं छ माह की अवधि में प्रक्रिया को पूरा कर लेगा तथा उपरोक्त अवधि के भीतर माननीय केन्द्रीय सरकार औद्योगिक ट्रिब्यूनल को परिणामी में अवगत कर देगा।

अप्रार्थी की ओर से श्री आ.पो. निगमता, अनिरिकन गार्हाप्रबन्धक (कार्मिक) ने स्वीकार किया है कि समझौते में उल्लेख की गई शर्तें मध्या-2 (ए) की पालना हो चुकी हैं। प्रार्थी लिखित परीक्षा/ट्रेड टेस्ट/साक्षात्कार में उत्तीर्ण हो चुका है। पक्षकारों का निवेदन है कि इस प्रकरण में अब पक्षकारों के बीच कोई विवाद नहीं रहा है, अतः विवाद रहित पंचाट पारित कर दिया जाये। दोनों ही पक्ष समझौता की शर्तें मध्या-2 ए, बी, डी, ई, एफ की सही होना स्वीकार करते हैं। चूंकि पक्षकारों के बीच कोई विवाद नहीं रहा है। अतः विवाद रहित पंचाट पारित किया जाता है।

पंचाट को प्रतिलिपि केन्द्रीय सरकार को अविनियम, 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

ह./- अध्यक्षता,

रीठावीन अधिकारी

नई दिल्ली, 30 अक्टूबर 2001

क.प्रा. 3201.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कार्पा लि. के प्रबंधन के संबंध में निम्नलिखित विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट का प्रकाशन करती है, जो केन्द्रीय सरकार की 30-10-2001 को प्राप्त हुआ था।

[म. जैड-13012/2/2001-आई आर (एम)]

बी.ए. डेविड, प्रवर सचिव

New Delhi, the 30th October, 2001

workman Shri D. N. Vidhate is entitled to?"

S.O. 3201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management HINDUSTAN PETROLEUM CORPORATION LTD. and their workman, which was received by the Central Government on 30-10-2001.

[No. Z-13012/2 2001-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/48 of 2001

Employer, in Relation to the Management of Hindustan Petroleum Corporation Ltd.
The Chairman & Managing Director,
Hindustan Petroleum Corporation Ltd.,
Petroleum House, 6th Floor,
No. 17, Jamshedji Tata Road,
Churchgate, Mumbai-400 020.

AND

Their Workmen
Petroleum Employees Union,
Tel. Rasayan Bhavan,
Tilak Road, Dadar,
Mumbai-400 014.

APPEARANCES :

For the Employer : Mr. B. D. Birajdar, Advocate.

For the Workmen : Mr. Jaiprakash Sawant, Advocate.

Mumbai, dated 14th September, 2001

AWARD-PART-I

The Government of India, Ministry of Labour, by its Order No. Z-13012/2 2001-IR(M), dated 19-3-2001 and transfer order dated 19-4-2001, have referred the following industrial dispute to this tribunal for adjudication, in exercise of the powers conferred by clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947.

"Whether the action of the management of Hindustan Petroleum Corporation Ltd., Mumbai in terminating the services of Shri D. N. Vidhate, Employee No. 802345 Senior Boiler Technician, Boiler House-FR, Mumbai Refinery, w.e.f. 19-1-2001 is legal and justified? If not, what relief the

2. The workman Shri D. N. Vidhate, was employed as Assistant Boiler Technician on 27th July, 1987 in the refinery of Hindustan Petroleum Corporation Ltd., Mumbai. He was elected General Secretary of the Employees Union in 1991. He was promoted as Senior Boiler Technician in the year 1995. It is contended workman put unblemished service from 1987 till the date of his dismissal i.e. 19-1-2001. Workman pleaded that since he fought for the cause of the employees he was very much popular among the employees and therefore the management had animus to victimise him, and consequently attempted so in the year 1993 & 1997 by suspending him. He contended that because of the union activities he had to attend meetings, conferences and discussions at the Government offices including the Labour Commissioner (C) and the Labour Court, Industrial Tribunal and courts. Therefore at times he was attending the office late. He had severe asthma and therefore he had to take leave. However, he did so without affecting the regular work. He averred that management in order to victimise him chargesheeted him on 12th August, 1998 on three counts :

1. For remaining absent for about 95 days during the period from January 1998 to July 1998 without prior approval/intimation of his superiors, of which about 45 days were on loss of pay, after availing of entire leave to his credit.
2. For coming late for duty frequently on a number of occasions, by 2 to 3 hours and for leaving the work place early, particularly during the Day shifts without prior approvals of his Supervisor.
3. For not performing his routine jobs while on duty, on his own but performing a few jobs only on the instructions of his Supervisor causing difficulties for the department in maintaining shift schedules, as the unit is operating on the basis of man to man relieving system and adversely affecting the work schedules and production of the Department.

and that Disciplinary Authority appointed Manager (Finance) Shri Rakesh Mahajan as inquiry officer and Shri R. B. Mehta, Manager (Boiler House) as Presenting Officer. It is contended that he was chargesheeted as above under the Standing Orders which were not applicable to him as Model Standing Orders (Central) prescribed under the Industrial Employment (Standing Orders) Act, 1946 were only applicable to him and that the charges which were for the period January 1998 to July 1998, were not specific and the same were vague and general in nature, therefore by his letter dated 8th September, 1998 and 10th October, 1998 he requested the management to provide details and particulars but management did not furnish it, therefore, he could not submit his explanation to the chargesheet. It is contended that he had

asked leave record, however it was found manipulated with a view to victimise him which he had brought to the notice of Inquiry Officer. It is further contended that inquiry officer conducted the inquiry under the influence of the Presenting Officer, who was totally bias to him. He used to instigate employees against him, which he had apprised to the Inquiry Officer Mr. Mahajan by the letter dated 9th July, 1999, however, he did not take that letter on record. It is contended inquiry officer did not record the proceedings correctly and accurately, nor the inquiry held as per procedure. He was not given copies of the documents nor the inspection of the documents relied upon by the management, though requested to the inquiry officer. For all these reasons he contended that inquiry was in violation of Principles of Natural Justice and no sufficient opportunity was given to him. It is further contended that the inquiry officer in his inquiry report held him guilty for late attendance for more than four occasions in a calendar month, habitual absence without permission, though, record shows that he was not so absent which find place in the letter of Chief General Manager dated 19-1-2001 thereby the findings recorded against the record, and are bias. It is contended by workman that, on the report of the inquiry officer dated 25-10-99, disciplinary authority dismissed him illegally on 19-1-2001, which is against the provisions of labour practice, as the dismissal order came to be passed 14 months after receipt of the inquiry report. It is therefore contended that the inquiry is not fair and findings are perverse, and that action taken by the management on his dismissal is illegal and therefore he be reinstated in service with full back wages.

3. Management, H.P.C.L., resisted the claim of workman by filing Written Statement (Exhibit-17). Management denied that workman was victimised on any of the grounds and that he has been illegally erminated. It is their contention that he was dismissed from service for proved acts of major misconduct, as a boiler technician attendance of workman on duty should be regular and punctual when the boiler is in operation and the attendance of boiler competency is a must. However, the workman was most irregular and non-punctual in his duties, remained unauthorisedly absent and that his erratic attendance used to get innumerable problems in running the sensitive section of boiler, and that being a union leader to find a substitute for him without notice was a difficult task. It is contended that particulars of the accusations were clearly mentioned in the chargesheet, he was given full opportunity to defend himself and he was given all copies of the documents relied by the management. He was given copies of the report. The inquiry was conducted for more than three months spreading nine meetings giving the workman opportunity to cross-examine the management witnesses and that the inquiry was fair and proper observing the Principles of Natural Justice. It is contended that workman as least interested in the performance of the duties, and except carry on his trade union activities at the cost of his responsibilities. It is contended that the inquiry was conducted in accordance with the certified Standing Orders applicable to him, and

considering grave misconduct he has been dismissed. It is contended that the inquiry officer on recording correct proceedings on proper conclusions, recorded findings as per record and therefore the inquiry being fair and proper and finding being as per record, workman has been rightly dismissed and consequently his claim does not stand to reason.

4. On the basis of pleadings two preliminary issues were framed at Exhibit-21. Workman, Shri Vidhate, filed his affidavit (Exhibit-25) and was cross-examined by the management and later on he closed his evidence vide purshis (Exhibit-33). Management did not lead oral evidence for the reasons mentioned in the purshis (Exhibit-34).

5. Heard the Learned Counsel for both the parties, at length Perused the written submissions of workman (Exhibit-35) alongwith zerox copies of the rulings. On hearing the Learned Counsels and perusing the record as a whole, and the Written Submissions as above, I record my findings on the following preliminary issues, for the reasons mentioned below :

Issues	Findings
1. Whether the domestic inquiry conducted against the workman was as per the Principles of Natural Justice ?	No
2. Whether the findings of the inquiry officer are perverse ?	Yes.

REASONS

6. Admittedly workman Shri Vidhate was working as Senior Boiler Technician in Mumbai Refinery, and that on inquiry he was dismissed from the service w.e.f. 19-1-2001. According to workman inquiry held against him was improper, against the Principles of Natural Justice and that findings recorded by the inquiry officer are pervers. So far domestic inquiry is concerned. Their Lordships of Supreme Court in *Sir Esmel and Stamping Works Ltd. Vs. Their Workmen* 1963 II LLJ p. 367 pointed out that the inquiry cannot be said to have been properly held Unless :—

- (i) the employee proceeded against has been informed clearly of the charges levelled against him;
- (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges;
- (iii) the employee is given a fair opportunity to cross-examine witnesses;
- (iv) he is given a fair opportunity to examine witnesses including himself

in his defence if he so wishes on any relevant matter; and

- (v) the enquiry officer records his findings with reasons for the same in his report.

Workman stated in his affidavit that the inquiry officer Mr. Mahajan and the Presenting Officer Mr. R. B. Mehta are subordinate to Chief General Manager, the Disciplinary Authority and that they were influenced by him, and added that, there was no independent inquiry officer and therefore the inquiry vitiates. He has averred that the Presenting Officer Mr. Mehta was against him which he had apprised to the inquiry officer by the letter dtd. 9th July, 99 (pg. 53, Exhibit-14). However that was not taken on record and further pointed out that the Presenting Officer himself gave evidence in favour of the management and that the procedure of holding the inquiry was irregular as sometimes inquiry officer asked questions to the management witnesses and at the same time took his cross-examination thereby inquiry itself was full of infirmities. The Learned Counsel Shri Sawant for the workman inviting attention of this tribunal to the inquiry proceedings filed by him no 86 to 106 (Exhibit-14 of which copies filed by the management pg. 63-89 (Exhibit 22) upon which the management relies in so far as fairness of inquiry vide *nurshie* (Exhibit-34), submitted that the manner in which the inquiry was held was absolutely strange and unknown to the established procedure of domestic inquiry. On perusal of the inquiry proceedings it is seen inquiry was held on 9 dates commencing from 7.4.99 ending 30th July, 1999 and on all these dates, inquiry officer asked questions to Presenting Officer, witnesses of the management and also the workman at one and the same time, thereby the very purpose of cross examination has been defeated. When normally charges are framed against the delinquent workman, the management has to lead evidence to prove the same, and hereafter the workman had to lead evidence in rebuttal. However, in the case in hand, it is seen the inquiry officer did not follow the proper procedure. The Learned Counsel Mr. Sawant at this juncture argued that in a large majority of cases employees are likely to be ignored and so it is necessary to expose them to the risk of cross-examination in the manner adopted in the present inquiry proceedings and therefore the present inquiry proceedings

constituted infirmity and therefore it certainly vitiates. He has relied on *Associated Cement Cos. Vs. Their Workmen* 1963 II LLJ pg. 396. In the above said ruling Their Lordships ruled that it is not fair in domestic inquiry against industrial employees that at the very commencement of the inquiry employees should be closely cross-examined even before any other evidence is lead against him. True it is in domestic inquiry the evidence has to be considered from the point of view of preponderance of probabilities and not like the benefit of doubt as has happened in criminal trial. Mr. Mehta being a Presenting Officer has to represent on behalf of the management, where question of his examination as witness does not and cannot arise. It was his duty to take Examination-in-Chief of the witnesses for the management and to cross examine the delinquent workman and his witness it was not his job to depose as witness on behalf of the management. At this juncture, the Learned Counsel for management Mr. Birajdar submits that rules of evidence Act do not apply to the departmental enquiries, and that it is the duty of the inquiry officer to elicit truth from witnesses, and for this, he is even entitled to cross-examine the witnesses for the same and this will not bring any bias. In a domestic inquiry a detailed procedure of recording evidence as followed in courts, need not be strictly adhered to for which he has relied on *Sukhadeo Vishwanath Garaje Vs. M/s. Food Corporation of India and Ors.* 1988 I LLJ pg. 277. Looking to the inquiry proceedings minutely, hardly can be said that it was without infirmity/defects. The facts of the case cited by Mr. Birajdar and the facts of the case on hand, are different. Here the entire procedure is full of infirmities and that the decision relied was concerning to the leading question to be asked, therefore it is no avail for the management.

7. The Learned Counsel Mr. Birajdar inviting attention of this Tribunal to the cross-examination of workman para 30 and lengthy Statement of Claim wherein much has been recited on so called welfare activities done by him in the capacity of trade union leader, urged with force that workman admittedly did not complain in writing to the inquiry officer nor the management on alleged recording incorrect proceedings, therefore hardly to believe that the proceedings was incorrect. It is to be noted that the workman in the second

breath pointed out that he was not aware on the procedure. What is to be seen whether by adopting the procedure of inquiry prejudice has been caused to workman. The fact that procedure of inquiry referred to above, was absolutely irregular and improper thereby to my view it can safely be said that, that caused prejudice to workman, as principles of Natural Justice were not followed.

8. Apart from this, so far the inquiry officer and the Presenting Officer are concerned they are said to be subordinate to the Disciplinary authority. Therefore Mr. Mahajan cannot said to be independent inquiry officer, when according to workman, inspite of giving application dtd. 9th July, 1999, pg. 53 (Exhibit-14) it was not taken on record by inquiry officer, which speaks against Presenting Officer, Mr. Mehta.

9. Inquiry Officer, Mr. Mahajan prepared inquiry report on 25-10-99, pg. 86—106 (Exhibit-14). By this report he concluded that out of three charges i.e. habitual or gross negligence, late attendance of more than four occasions in a month, habitual absence without permission, two charges have been proved except the habitual absence without permission. The Chief Engineer, Disciplinary Authority in his report dated 19-1-2001 (pg. 1 to 11) (Exhibit-22) on pg. 4 pointed out that, the inquiry officer erred in counting absence on loss of pay seven days instead of 5 days for the month of June, 1998 and that he did not take into account four intervening off days, in the month of May, 1998, 5 intervening off days, in the month of June, 1998 and four intervening off days in the month of July, 1998 totalling 13 intervening off days in so far as absence on loss of pay and further found that the inquiry officer did not take into account absence of 29 days on loss of pay under sick leave on full pay category and absence of 8.35 days on loss of pay in casual leave category. This clearly shows that inquiry officer concluded without considering the record. At this juncture, the Learned Counsel Mr. Sawant urged that the findings recorded by the inquiry officer are against the record and hence perverse. Infact, when inquiry procedure was not correctly adopted which occasion prejudice to the workman resulting in vitiating the inquiry itself, there is no need to consider on the point of perversity of findings as held by His Lordship of Bombay High Court in CST, Mumbai Vs. Rajan Kumar Mohalik 2000 III CLR 117.

10. The Learned Counsel Mr. Sawant submits that chargesheet was vague and that workman was not given opportunity to give reply to that and that material documents were not provided to him, thereby prejudice has been caused to him. I find no substance in this submission because the workman himself in cross-examination para 30 pointed out that he had given detailed reply to the chargesheet vide pg. 90, 91, 92 on receiving the attendance record. So far the engaging Defence Counsel, workman admits

that he did not complain in writing on recording portion 'A' on pg. 67 (Exhibit-22) which clearly mentions that he had apprised the inquiry officer, that he does not require any defence counsel, therefore hardly now lie in the mouth of workman that on this count inquiry vitiates.

11. On going through the discussion supra it is clear that the procedure of inquiry conducted against the workman by the inquiry officer was totally erroneous, which prejudiced the workman and the findings recorded by the inquiry officer in so far as the material charge on leave is concerned, is against the record and therefore the finding to that effect is perverse which vitiates the inquiry as a whole. Issues are answered accordingly. Therefore the following order is passed :

ORDER

The domestic inquiry conducted against the workman was not as per the Principles of Natural Justice and findings of the inquiry officer are perverse.

The management to lead evidence to justify its action.

Mumbai

Dated : 14th September, 2001.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल एल्युमिनियम कं.लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/10/2001 को प्राप्त हुआ था।

[सं. एल-29011/41/99-आई आर(एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar (Orissa) as shown in the Annexure in the Industrial dispute between the employers in relation to the National Aluminium Co. Ltd. and their workmen which was received by the Central Government on 19-10-2001.

[No. L-29011/41/99/IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR

PRESENT :

Shri S. K. Dhal, OSJS, (Sr. Branch).
Presiding Officer, C.G.I.T.-cum-Labour,
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO.
329/2001

Date of conclusion of hearing
27th September, 2001

Date of Passing Award 10th October, 2001

BETWEEN

The Management of the General Manager,
National Aluminium Company Ltd.,
Captive Power Plant, Angul-759145.
.. 1st Party-Management.

AND

Their Workmen, represented through.
The General Secretary, NALCO Shramik,
Congress Union, NALCO Nagar,
Angul-759145. .. 2nd Party-Union.

Appearances :

None.—For the 1st Party-Management.

None.—For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29011/41/99/IR(M), dated 15-02-2000 :—

“Whether the action of the Management in not allotting the quarters to Shri B. D. Sahoo, employee of C.P.P., NALCO is justified? If not, to what relief the workman is entitled to?”

2. The reference was made in the year 2000. While making reference the Government of India (Ministry of Labour) had

intimated the 2nd Party-Union to file their Claim Statement. From the date of receipt of the reference the Tribunal also directed by issuing notice to the 2nd Party-Union to file the Claim Statement, but the 2nd Party-Union did not take any step. The representative of the 1st Party-Management has made his appearance on 7-6-2000. Both the portion have been set ex parte.

3. The dispute has been raised on behalf of the 2nd Party-Union. Unless, the Claim Statement is filed, there is no scope for the 1st Party-Management to file their Written Statement. As the 2nd Party-Union has not taken any step and he has not filed his Claim Statement, it can not be said that the demand of the 2nd Party-Union is justified. Unless the materials placed before the Tribunal, it can not be said that the action taken by the 1st Party-Management as referred to by the Government of India is unjustified. So in that case, it can be said that the action of the 1st Party-Management not allotting the quarter to Shri B. D. Sahoo, employee of C.P.P., NALCO is justified.

3. Reference is answered accordingly.

S. K. DHAL, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.प्रा. 3203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली माईन्स आफ बी.एस.पी. के प्रबंधकों के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-01 को प्राप्त हुआ था।

[सं. एल-29012/137/98-आई आर(एम)]

बी.एम. डेविड, अव्वर सचिव

New Delhi, the 30th October, 2001

S.O. 3203.—In pursuance of Section 17, of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of DALLI Mines of BSP and their workmen which was received by the Central Government on 17-10-2001.

[No. L-29012/137/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR, M.P.

Case No. CGIT/LC(R)(86)/99

Shri Paltan S/o. Ram Prasad
C/o. Sahadev Sahu, Tabler Set,
At & PO Dalli-Rajhara,
Durg.

.. Workman.

Vs.

1. The President, Shramik Sahakari Samiti Ltd., PO : Dalli-Rajhara, Durg. Management.
2. The Mines Manager, Dalli Mines of BSP, PO : Dalli-Rajhara.

AWARD

(Passed on this 25th Day of September, 2001)

1. The Government of India, Ministry of Labour, vide order No. L-29012/137/98/IR (M), dt. 5-2-1999, has referred this dispute for adjudication as under :—

"Whether the action of the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli Mines, in terminating the service of Shri Paltan w.e.f. 08-05-1997 is justified ? If not, to what relief he is entitled ?"

2. The management has objected the maintenance of this reference before this Tribunal. Their contention is that the workman was employed by Shramik Sahakari Samiti Ltd., Dalli-Rajhara. His services were terminated w.e.f. 8-5-1997. He challenged his order of termination before the Asstt. Registrar, Co-operative Societies, Durg, under the Provisions of M. P. Co-operative Societies Act. The Provisions of I. D. Act shall not apply in the present case. The workman had the remedy under the Provisions of M. P. Co-operative Societies Act only and not under the Provisions of I. D. Act 1947.

3. It is admitted fact that the workman was never employed by the Bhilai Steel Plant. He was employed by the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli-Rajhara Mines. In this way, there was no relationship of Master and Servant between

the management of BSP and the workman. He was employee of Shramik Sahakari Samiti Ltd. He had the remedy to challenge the order of dismissal from services under the Provisions of M. P. Co-operative Societies Act and not under the Provisions of I. D. Act 1947 as laid down by the Supreme Court in R. C. Tiwari Vs. M. P. Rajya Sahakari Mktg. Federation Ltd., (1997) 5. SCC, page 125.

4. In view of the facts stated above, it is held that this reference is not maintainable before this Tribunal. The workman is not entitled to any relief under the Provisions of I. D. Act 1947. Reference is answered accordingly.

5. Copy of the award be sent to the Government of India, Ministry of Labour, New Delhi, for publication as per rule.

K. M. RAI, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का. घा. 3204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली माईन्स ऑफ़ बी.एस.पी. के प्रबंधन के संबंध निम्नलिखित और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रस्तावित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[सं एल-29012/139/98-आई.प्रार. (एम.)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 29th October, 2001

S.O. 3204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947. (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Dalli Mines of BSP and their workmen which was received by the Central Government on 17-10-2001.

[No. L-29012/139/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR, M.P.

Case No. CGIT/LC(R)(87)/99

Shri Pusau S/o. Chatri,
C/o. Shri Sahadev Sahu, Tabler,
Set, At & PO Dalli-Rajhara,
Durg. Workman.

Vs.

1. The President, Shramik Sahakari
Samiti Ltd., PO : Dalli-Rajhara,
Durg. Management.
2. The Mines Manager, Dalli Mines of
BSP, PO : Dalli-Rajhara, Drug.

AWARD

(Passed on this 25th Day of September, 2001)

1. The Government of India, Ministry of Labour, vide order No. L-29012/139/98/IR (M), dt. 5-2-1999, has referred this dispute for adjudication asunder :—

“Whether the action of the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli Mine in terminating the service of Shri Pusau w.e.f. 8-5-1997 is justified? If not, to what relief he is entitled?”

2. The management has objected the maintenance of this reference before this Tribunal. Their contention is that the workman was employed by Shramik Sahakari Samiti Ltd., Dalli-Rajhara. His services were terminated w.e.f. 8-5-1997. He challenged his order of termination before the Asstt. Registrar, Co-operative Societies, Drug, under the Provisions of M. P. Co-operative Societies Act. The provisions of ID Act shall not apply in the present case. The workman had the remedy under the Provisions of M. P. Co-operative Societies Act only and not under the Provisions of I. D. Act, 1947.

3. It is admitted fact that the workman was never employed by the Bhilai Steel Plant. He was employed by the management of Shramik Sahakari Samiti Ltd., a contractor of BSP at Dalli-Rajhara Mines. In this way, there was no relationship of Master and Servant

between the management of BSP and the workman. He was the employee of Shramik Sahakari Samiti Ltd. He had the remedy to challenge the order of dismissal from services under the Provisions of M. P. Co-operative Societies Act and not under the Provisions of I. D. Act, 1947 as laid down by the Supreme Court in R. C. Tiwari Vs. M. P. Rajya Sahakari Mktg. Federation Ltd., (1997) 5 SCC, page 125.

4. In view of the facts stated above, it is held that this reference is not maintainable before this Tribunal. The workman is not entitled to any relief under the Provisions of I. D. Act, 1947. Reference is answered accordingly.

5. Copy of the award be sent to the Government of India Ministry of Labour, New Delhi, for publication as per rule.

K. M. RAI, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का आ. 3205 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के सबब नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2001 को प्राप्त हुआ था।

[स. एल-31011/22/2000-आई.आर. (एम.)]
बी.एम. डेविड, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Mumbai Port Trust and their workmen which was received by the Central Government on 30-10-2001.

[No. L-31011/22/2000-IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI
PRESENT :

S. N. Saundankar.—Presiding Officer,

Reference No. CGIT-2/25 of 2001

Employers in relation to the management of
Mumbai Port Trust.

The Chairman,
Mumbai Port Trust
Mumbai 400 038.

AND

New Delhi, the 30th October, 2001

Their Workmen.

Sh. Ram Premchand Makhija,
B. NOI. B/46, R. No. 271, Harijan Pada,
Ulhasnagar No. 5, Distt. Thane
Mumbai 400 038.

APPEARANCES :

For the Employer.—Mr. Umesh Nabar Advocate.

For the Workmen.—No Appearance.

Mumbai, Dated 11th October, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-31011/22/2000/IR(M), dated 2-2-2001, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this tribunal for adjudication.

“Whether the action of the management of Mumbai Port Trust, Mumbai in terminating the services of Shri Ram Premchand Makhija, ‘A’ category Mazdoor, by way of removal from service w.e.f. 15-11-96 is legal and justified? If not, what relief the workman is entitled to?”

2. Pursuant to the notice workman's advocate appeared vide (Exhibit-5) on 20-3-2001 and Advocate Shri Umesh Nabar for the management, Mumbai Port Trust, vide (Exhibit-6) on 19-4-2001. Consequently matter was fixed for filing of Statement of Claim by workman on 19-4-2001. However, that day workman remained absent, nor filed his claim, hence the matter was fixed on 15-5-2001. However workman did not appear nor filed his Statement of Claim that day nor on subsequent dates i.e. 14-6-2001, 19-7-2001 and 23-8-2001. Today also workman and his advocate absent nor filed Statement of Claim which shows workman is not interested in prosecuting the reference. Hence the following order is passed :—

ORDER

Reference stands disposed of for non-prosecution.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.प्रा. 3206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. नटवर पारिख इ. लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2001 को प्राप्त हुआ था।

[सं. एल-31012/2/2001—आई. प्रार. (एम.)]

बी.एम. डेविड, प्रवर सचिव

S.O. 3206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Natwar Parikh Ind. Ltd., and their workmen which was received by the Central Government on the 30-10-2001.

[No. L-31012/2/2001-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.—Presiding Officer.

Reference No. CGIT-2/58 of 2001

Employers in relation to the management of M/s. Natwar Parikh Ind. Ltd.

M/s. Natwar Parikh Ind. Ltd.,
Natwar Parikh House,
107/109, P.D. Mello Road,
Mumbai-9.

AND

Their Workmen.

Sh. Shriram Maurya,
15/2, Mahavir Nagar, Khade Golawadi,
Vithalwadi, Kalyan (E), Thane.

APPEARANCES

For the Employer.—Mr. V. P. Vaidya Advocate.

For the Workmen.—In Person.

Mumbai, Dated 10th October, 2001

AWARD

The Government of India Ministry of Labour, by its Order No. L-31012/2/2001/IR(M), dated 14-5-2001, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following Industrial Dispute to this Tribunal for adjudication.

“Whether the action of the management of M/s. Natwar Parikh Ind. Ltd., in not re-instating Mr. Shriram Maurya, in employment with effect from 24-9-94 with all consequential benefits is legal and justified? If not, what relief the workman concerned is entitled to?”

2. Pursuant to the notices, the workman Mr. Shriram R. Maurya and on behalf of the management Mr. Natwar Parikh Industries Ltd. Advocate, Mr. V. P. Vaidya appeared before the tribunal on 5-10-2001, and alongwith purshis (Exhibit-9) they filed Memorandum of Settlement dated 10th May, 2001. Since the workman settled the dispute with

the management does not want to proceed with the reference, therefore the following order is passed:-

ORDER

Reference stands disposed of vide Memorandum of Settlement, dated 10th May, 2001, enclosed with pursals (Exhibit-9)

S. N. SAUNDANKAR, Presiding Officer

BEFORE THE INDUSTRIAL TRIBUNAL NO. 2
AT MUMBAI

Reference No. CGIT-2/58 of 2001

BETWEEN

Natwar Parikh Industries Ltd.,

AND

Shriram Maurya,

May it please, this Hon. Court,

Be pleased to pass Award in name of settlement dated 10-5-2001 arrived at under Section 12(3) of I.D. Act 1947 between the parties herin. Mumbai.

Dated : 5-10-2001.

(Sd.-)

(Admjit Sarkar)

(Sd.-)

(Shriram Maurya)
Concerned Workman

(Sd.-)

(V. P. Vaidya)
Advocate for the Party.

(Sd.)

5-10-2001.

Memorandum of Settlement

Memorandum of Settlement dated 10th May, 2001 arrived at Mumbai under Section 12(3) of Industrial Disputes Act, 1947 before the Regional Labour Commissioner (Central), Mumbai over an Industrial Dispute of alleged illegal dismissal from service of Shri Shriram R. Maurya, former Supervisor of M/s. Natwar Parikh Industries Ltd.

Parties Present

Shri C. N. Menon,
General Manager (P & A)
M/s. Natwar Parikh Industries Ltd.

AND

Shri Shriram R. Maurya,
Former Supervisor.

Short Recital

Shri Shriram R. Maurya raised an industrial dispute against the management of M/s. Natwar Parikh

Industries Ltd. vide his representation, dated 18-11-1999 over his alleged illegal dismissal from employment. The said dispute was taken on file by the Assistant Labour Commissioner (Central)-I, Mumbai who held joint discussions/conciliation proceedings on several dates. As the parties were holding divergent views and amicable settlement was not found feasible the Assistant Labour Commissioner (Central), Mumbai submitted his report on failure of Conciliation to the Secretary, Government of India, Ministry of Labour, New Delhi vide his letter No. B ALC(C)-I/8(18)/2000 dt. 29-9-2000/15-2-2001. Later on, both the parties approached the Regional Labour Commissioner (Central), Mumbai vide their letter dated 9-5-2001 requesting him to reopen the dispute and intervene in the matter in order to bring an amicable settlement.

The Regional Labour Commissioner (Central), Mumbai intervened in the above said dispute and held conciliation proceedings on 10-5-2001 when both the parties were present. After prolonged conciliation proceedings, the following terms of settlement was arrived at under section 12(3) of the Industrial Disputes Act, 1947 as full and final settlement.

Terms of Settlement

1. The management agreed to pay a total amount of Rs. 75,000. (Rupees Seventy five Thousand only) to Shri Shriram R. Maurya, former Supervisor towards the terminal benefits which include one-month notice pay, retrenchment compensation, gratuity, bonus, Leave Travel Allowance and ex-gratia.

2. The workman has agreed to withdraw his industrial dispute which has already been made a failure by the Assistant Labour Commissioner (Central)-I, Mumbai. He has also agreed not to make any claim for re-instatement/re-employment and any other financial claim in respect of his employment.

3. Both the parties agreed to submit implementation report by 30th June, 2001 failing which by either the parties, the settlement would be deemed to have been implemented.

Representing Management : Representing Workman :

(Sd |)

(Shri C. N. Menon)
General Manager (P & A)
M/s. Natwar Parikh Industries
Ltd

Representing Workman :

(Sd |)

(Shri Shriram R. Maurya)

Witnesses :

1. Shri Hemanshu N. Mumbaiwadi.
2. Shri Rohini S Powale.

(Sd.)

(Ch Sivaramakrishna)

Conciliation Officer and
Regional Labour Commissioner
(Central) Mumbai

No Claim Receipt

I Shriram R Mourya do hereby state and declare that in terms of the Memorandum of Settlement dated 10-5-2001 executed before the Regional Labour Commissioner (Central), Mumbai, I have received on this day of 11-5-2001 a sum of Rs. 75,000 by cheque No. 952339 and 003133 dt. 21-5-2001 both drawn on Bombay Mercantile Co-op Bank Ltd., for Rs. 13,770 and Rs. 61,230 respectively totalling to Rs. 75,000 in Full and Final Settlement of all my terminal legal dues in Natvar Park Industries Ltd., the break-up of which is as below :

Bonus	Rs. 1,398.00
Leave Travel Assistance	Rs. 1,006.00
Gratuity	Rs. 13,770.00
Retrenchment Compensation	Rs. 13,667.00
One Month Salary in lieu of Notice	Rs. 2,927.00
Ex-Gratia payment	Rs. 42,232.00
Total	Rs. 75,000.00
Deductions	
Nil	Nil
	Rs. 75,000.00

(Rupees Seventy Five Thousand only)

In view of this settlement I hereby confirm that I have no any other claim monetary or otherwise against the company including that of re-employment or reinstatement and my complaint dated 18-11-99 made before the Assistant Labour Commissioner (Central) Mumbai hereby stands withdrawn.

(Shriram Mourya)

Witness : (Sd.)

Date: 11-5-2001.

नई दिल्ली, 01 अक्टूबर, 2001

का.ग. 3207—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों 3497 GI/2001—4

और उनके कर्मचारियों के बीच, अनुवृत्त में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण ग्रहणवाद के पचाट को प्रकाशित करने हेतु, जो कन्द्रीय सरकार को 31-10-2001 का प्राप्त हुआ था।

[म एन-12012/223/98-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st October, 2001

S.O. 3207.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 31-10-2001.

[No. L-12012/223/98-JR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SMT N. J. SHELAT, INDUSTRIAL
TRIBUNAL (CENTRAL), AHMEDABAD

Reference (ITC) No. 31 of 1999

ADJUDICATION

BETWEEN

The State Bank of India,
Ahmedabad.

Versus

The workmen employed under it

In the matter of termination of Shri Hemant J.
Parekh, w.e.f. 16-05-97.

APPEARANCES :

Shri B. K. Oza, Learned Advocate, for the first
party

Shri Iqbal A. Patel, Learned Representative for
the second party.

AWARD

The above mentioned industrial dispute between the parties mentioned therein are referred for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 by Government of India, Ministry of Labour, New Delhi vide its order No. L-12012/223/98-JR(B-1) dated 11-01-1999 to the Industrial Tribunal, Ahmedabad. Subsequently under an appropriate order it has been transferred to this Tribunal for proper adjudication. The dispute pertains termination of one Shri Hemant J. Parekh w.e.f. 16-05-97 as is mentioned in the schedule to the order of reference. The exact terms of reference is as under :

"Whether the action of the management of State Bank of India, Ahmedabad is justified in terminating the services of Shri Hemant J. Parekh w.e.f. 16-05-97? If not what relief the workman concerned is entitled to?"

2. The second party workman has filed his statement of claim Ex. 4 stating that he has initially joined the bank on 08-03-88 at Kaira Branch and worked as sweeper/watchman from 8-3-1988 to 9-3-1988 for 2 days. Again in the month of April for 2 days and against from 13-05-88 to 15-06-88 for 34 days as a water sprinkler, that thus he has worked totally for 38 days, as per certificate dated 15-06-88 issued by Kaira Branch Manager.

The first party bank had published an advertisement dated 01-08-1988 inviting applications from persons who have worked with the first party bank on temporary basis as Hemal sweeper or watchman with a view to regularise them in their bank, that second party workman being eligible, applied in the first party bank in terms of the advertisement dated 01-08-1988, for his regularisation in service, that the Kaira Branch of the first party bank issued a memorandum dated 02-05-1989 appointing the second party workman as water sprinkler for 43 days from 04-05-1989 to 15-06-1989 on a salary of Rs. 430 p.m. on temporary basis, that the Branch Manager, Kaira issued a certificate stating that the workman has worked for 43 days as water sprinkler, that the Regional Office of the first party bank, Ambawadi, Ahmedabad issued a call letter of interview dated 31-08-1989 asking the second party workman to remain present for interview on 19-09-1989 in terms of the above advertisement dated 01-08-1988 for the candidates who have put in temporary service in the bank, that the second party workman accordingly appeared for interview as directed and waiting for regular appointment in terms of the interview, but in vain.

The Kaira branch of the first party bank has again summoned the second party workman as water sprinkler, that the second party workman has worked as water sprinkler for 54 days i.e. from 23-04-1990 to 15-06-1990, that the second party workman also worked for a day on 19-06-1990 as a watchman; that the Kaira Branch Manager has issued a certificate dated 06-09-1990 to that effect: that the second party workman has worked as badli watchman on 19-06-1990 and as water sprinkler from 28-04-1991 to 28-05-1991 for 31 days, and from 29-05-1991 to 14-06-1991 for 17 days; that thus the second party workman had worked for total 186 days as per certificate dated 06-01-1992 issued by the Kaira Branch Manager that though the second party workman has worked for 186 days at the Kaira Branch of the first party bank, he was not absorbed as a regular employee of the first party bank for the reasons best known to them.

The second party workman had again applied with the first party bank for job, but the Zonal Office of the bank vide its letter dated 22-04-1992 informed the second party workman that since the name of the second party workman is already in the waiting list, he is not considered fit for the interview call in terms of his application; that the Kaira Branch Manager again issued a certificate dated 19-05-1992 showing that the workman has worked for 139 days upto 16-05-1992 on petty cash basis with the first party bank. The second party workman wrote a letter dated 19-09-1994 to the Zonal Office, Ambawadi, Ahmedabad requesting the first party bank to inform him regarding his position in the waiting list prepared by them in terms of interview so that he may know where he stands in the interview and also produced

necessary certificate showing that he has worked for 186 days from 08-03-1988 to 14-06-1991, so that he may be provided an opportunity to serve the first party bank. The second party workman has further submitted that the Zonal Office of the first party bank vide its letter dated 27-9-94 informed him in response to his letter dated 19-09-1994 that he is waitlisted under serial No. 707; that the second party workman once again wrote a letter dated 03-12-1996 to the Zonal Office, Ahmedabad for knowing the progress of wait list. The second party workman has submitted that he has also worked as a peon in the Anand branch of the first party bank for 267 days from 29-11-1995 to 14-12-1996, that the second party workman has also worked as a peon in the first party bank in their Vidya Nagar branch on voucher basis from 25-01-1997 to 24-02-1997, 28-02-1997 to 09-04-1997 and 10-04-1997 to 15-05-1997.

The second party workman also wrote a letter dated 16-06-1997 to the first party bank stating that he has worked for 186 and 160 days in the Kaira Branch between 08-07-1988 to 14-06-1991 as a daily wage in comparison to the other selected employees who have served lesser days than him; that he is entitled for absorption in the bank as a regular employee as a peon, that the first party bank vide its letter 28-6-1997 informed the second party workman that the list of temporary employees have been cancelled. The second party workman has submitted that the action of the bank cancelling the said wait list is illegal, arbitrary and capricious; that the second party workman has rendered his services to the first party bank prior to the advertisement and therefore he is a senior worker; that the second party workman has worked as water sprinkler, watchman as well as peon in the first party bank; that the second party workman has also served in three branches of the first party bank namely Kaira Branch, Anand Branch and Vitthal Udyog Nagar Branch, Vailagh Vidyanagar; that the service record of the second party workman is clean, blotless and without any blemish and that he has worked to the entire satisfaction of his superiors without any cause for grievance in all these three branches. That the second party workman has worked for 240 days in a calendar year at Anand Branch and therefore he has acquired the status of a permanent workman as per the provisions of the Industrial Disputes Act, 1947; that the first party bank cannot terminate the services of the second party workman without following the due procedure of law; that the first party bank has abruptly stopped assigning the work to the workman from 16-05-1997 without any reason or excuse; that by non-absorption and non-regularisation of the services of the second party workman, the first party has exploited the economic helplessness and unemployment of the second party workman; that the second party workman has rendered the services to the first party bank from 08-03-1988 and thus reached at an advanced age; that the first party bank has jeopardised every employment opportunity of the second party workman; that while terminating services orally from 16-05-1997, the first party bank has not considered the aspect that the second party workman has rendered the service of the first party bank since 08-03-1988 and thus the first party bank has exploited the second party workman; that the action of the first party bank in terminating the services of the second party work-

man orally from 16-05-1997 is illegal and bad in law arbitrary and mala fide, exploitative, unfair labour practice and contrary to the principles of justice and constitutional provisions, that the first party bank has not offered any opportunity of being heard to the second party workman prior to his illegal oral termination, that the first party bank has not given any reason prior to his illegal oral termination of service, that the first party bank has not conducted any departmental enquiry prior to his illegal termination, that the first party bank has violated all the principles of natural justice, that the second party workman is entitled to reinstatement in service with continuity of service seniority and other rights and advantages and benefits and full back wages from the date of illegal termination from 15-05-1997 till reinstatement in the first party bank as a peon

3 The second party workman has produced 12 documents vide Ex 5 in support of his case Ex 5/1 is the xerox copy of certificate issued by bank to the workman dated 16-05-1988 Ex 5/2 is the xerox copy of advertisement inviting application given by bank dated 01-08-1988 Ex 5/3 is the xerox copy of memo issued by the bank to the workman dated 02-05-1989 Ex 5/4 is the xerox copy of interview call letter of the bank dated 31-08-1989 Ex 5/5 is the xerox copy of certificate issued by the bank to the workman dt 6-9-1990 Ex 5/6 is the xerox copy of the certificate issued by the bank to the workman dt 6-1-1992 Ex 5/7 is the xerox copy of the letter written by the bank to the workman dated 22-04-1992 Ex 5/8 is the xerox copy of certificate issued by bank to the workman dated 19-05-1992 Ex 5/9 is the xerox copy of letter written by the workman to the bank dated 19-09-1994 Ex 5/10 is the xerox copy of letter written by the bank to the workman dated 27-09-1994 Ex 5/11 is the xerox copy of letter written by the workman to the bank dated 16-06-1997 Ex 5/12 is the xerox copy of letter written by bank to the workman dated 28-06-1997

4 The first party bank has filed its reply to the statement of claim vide Ex 6 inter alia denying the various contentions raised by the second party workman and have stated that the second party workman was called for work as per their requirement on a 1/3 time scale basis in the Kaira Branch as a sweeper-cum waterman and water sprinkler, that the second party workman has worked from 8-3-1988 to 15-6-1988 for 78 days and from 04-05-1989 to 15-6-1989 for 43 days and from 23-04-1990 to 15-06-1990 for 54 days, that the second party workman has worked from 08-08-1988 to 14-06-1991 in the Kaira branch at different times and under different designations for 186 days on a 1/3rd time scale basis that the second party workman has worked as a casual labourer on a daily wage basis in the Kaira branch for 139 days, that when any work is taken up on 1/3rd time scale basis, the working hours are for about 2 to 2 1/2 hrs, that there was an agreement between first party bank management and Union on all India basis so that different temporary and casual workers may get full time or part-time employment, that in that agreement there was one scheme and as per that scheme it was decided to make one pool for getting the permanent workers and their qualifications, age etc. were decided

in that agreement, that as per that settlement an advertisement was given and applications were invited from the persons who were qualified for the job, that these temporary, casual, part-time workers were interviewed after the advertisement and that a waitlist was made out and second party workman was at waitlist No 707, that whichever branch required the workers, the workers were sent from this waitlist by the head office, that the said waitlist was extended from time to time, but ultimately it was scrapped on 01-04-1997

The first party bank has denied that the second party workman has completed 240 days in their Anand branch. The first party bank has stated that the second party workman was working as casual labourer doing cleaning work and that that work was lasting for about 2 to 2-1/2 hrs only, and that he was getting Rs 25 as daily wage from that branch, that it is not true that he has completed 240 days work and therefore he is not entitled to be permanent workman in that branch. That in the same way, the second party workman worked in the Vihel Udyog Nagar Branch from 1-2-1997 to 5-2-1997 for 5 days and here also he was working for 2 to 2-1/2 hrs as casual labourer doing cleaning work. Thus the second party workman has worked from 08-03-1988 to 14-06-1991 on different designations as part-time time scale bauli worker, water sprinkler and sweeper for 186 days

The first party bank has denied that the second party workman has worked for 267 days in their Anand Branch and the first party bank has also denied that the second party workman has worked from 25-01-1997 to 15-05-1997 in their Vallabh Vidya Nagar Branch. But as the name of the second party workman was far behind in the waitinglist, he was not getting work with the first party bank, that under these circumstances the demand of the second party workman for getting reinstated with the first party with continuity of service and with full back wages is not legal and proper and requires to be rejected

4 The first party bank has produced five documents vide Ex 7 Ex 7/1 is the settlement between first party bank and All India SBI Staff Federation dated 17-11-1987 Ex 7/2 is also a settlement between the first party bank and All India SBI Staff Federation dated 1-1-1991 Ex 7/3 interview sheet of first party bank Ex 7/4 is the circular of first party bank dated 5-2-1987 Ex 7/5 is also a circular of first party bank dated 5-3-1996

5 The concerned workman Shri Hemant Kumar Jayantilal Parekh has examined himself on oath vide Ex 8 dated 31-1-2000 inter alia reiterating the facts stated in his statement of claim

Shri Hemant Kumar Parekh has been cross examined on 21-2-2000 and has stated in his cross-examination that it is not true that the bank was taking him for work as and when required by them. He has stated that he was working continuously and that he was a permanent workman of the bank, that he had applied in response to the advertisement for becoming permanent and that he was interviewed and that his name was in the list that half the persons whose names were in the list were absorbed, but his number did not come, that the first party bank has scrapped the list after seven years that the second party workman has further stated in his cross examination that at present he is doing labour work and

getting Rs. 30 to 35 as daily wage and that when he was doing work as a daily wager he was getting Rs. 25, but he had demanded more wages.

6. The second party workman has closed his oral evidence vide Ex. 13.

7. Thereafter the second party workman has produced five documents vide Ex. 14. Ex. 14/1 is the xerox copy of bankers' cheque of Rs. 125 paid by the first party to the second party dated 7-5-1996. Ex. 14/2 is the xerox copy of bankers' cheque of Rs. 600 paid by first party to second party dated 10-9-1996. Ex. 14/3 is the xerox copy of voucher for Rs. 575 dated 3-10-1996. Ex. 14/4 is the xerox copy of voucher for Rs. 900 dated 16-12-1996. Ex. 14/5 is the xerox copy of bankers' cheque of Rs. 125 dated 13-1-1997.

8. The first party bank has examined one Shri Jitendra Kumar Mukundbhai Desai on oath on 28-8-2000 vide Ex. 16. He has stated on oath in his chief examination, the facts stated in the written statement of the first party bank. It was stated in his cross examination that he is working as a Dy. Manager with the first party bank at Ahmedabad for the past 7 years; that every Branch Manager is having powers to keep daily wagers; and that they are sending a list to the Regional Office stating as to how many such workers are taken up for job. He has stated that the agreements dated 16-7-1988 and 27-10-1978 are not produced before this Court and that he will be producing the said agreements.

Thereafter the cross-examination was adjourned for production of documents which was continued on 25-9-2000. Shri Jitendra Kumar Mukundbhai Desai has admitted in his cross-examination that the concerned workman was not called for interview. He has further admitted that the concerned workman's services were terminated in lieu of settlement which is produced vide Ex. 7 and that while terminating the services of the second party workman he was not paid any notice pay/retranchement compensation or he was not given any other benefits.

9. The first party bank has produced the settlements vide Ex. 23. Ex. 23/1 is the settlement between SBI and All India State Bank Staff Federation dated 16-7-1988. Ex. 23/2 is the settlement between SBI and All India State Bank Staff Federation dated 27-10-1988. The first party bank has closed its oral evidence vide Ex. 26 dt. 12-3-2001. Thereafter there was one amendment application filed on 10-7-2001 vide Ex. 27, which was allowed by this Court.

10. I have gone through the records and papers of the case and have considered the arguments of both the parties and find that the reference is required to be rejected. In view of the fact that the second party workman was not a permanent employee of the first party bank and that the first party bank has not issued any appointment letter to the second party workman and that the second party workman has not completed continuous service of 240 days in a year and that the second party workman was taken up as a stop-gap arrangement by the first party bank. The case of the first party bank is that they entered into settlement with the Union and accordingly an advertisement was placed and the second party was called for interview

and was placed in the waiting list which was scrapped in the year 1997; and therefore the second party workman was not taken upon a permanent post with the first party bank. The second party workman has failed to prove his case that he has worked continuously for 240 days in a year with the first party bank and that he was a permanent employee of the bank and that the first party bank has indulged into unfair labour practice. On the contrary, the first party bank has entered into various settlements with the Union and accordingly made a serious attempt to offer permanent jobs to the temporary employees, as per the terms of that settlement with the All India SBI Staff Federation. The settlements are produced by the first party bank vide Exs. 23/1 and 23/2. In order to prove their case, the first party has produced relevant settlements, circulars and interview sheet vide Ex. 7. Taking into consideration, the documentary evidence as well as oral evidence and also under the facts and circumstances narrated herein above, I am of the opinion that the present reference is required to be rejected. The second party workman has not been able to prove his case as per the statement of claims and even the documentary evidence produced by him and from the oral evidence on oath vide Ex. 5 and Ex. 8, respectively that he was a permanent employee of the first party bank and that he has completed continuous service of 240 days in a year with the first party bank and that he was entitled to be given permanent work by the first party bank. On the contrary he has admitted in his cross-examination at Ex. 8 on oath that to become permanent he has applied with the first party bank in response to the advertisements and that his name was in the waiting list and that half of the persons in the waiting list were taken up by the first party and that he was not taken up for job by the first party bank. He has further stated in his examination-in-chief that his waiting list number was 707 and that in his cross-examination he has admitted that waiting list was scrapped after seven years and that his number did not come up for permanent appointment. In these premises I pass following order :

ORDER

The reference (ITC) No. 31 of 1999 is hereby rejected and the action of the management of State Bank of India, Ahmedabad is justified in terminating the services of Shri Hemant J. Parekh with effect from 16-5-1997. The workman Shri Hemant J. Parekh is not entitled to any relief. No order as to cost.

Ahmedabad, 31st August, 2001.

N. J. SHELAT, Industrial Tribunal

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3208:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सबंध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के

पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[स.एल-12012/334/97-नरि.अ.र. (नो-1)]
अजय कुमार, डक ऑफिसर

New Delhi, the 30th October, 2001

S.O. 3208.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 29-10-2001.

[No. L-12012/334/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT-55/2000

STATE BANK OF INDIA

AND

VINOD BHAURAOJI PARATE

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/334/97-IR(B-I) dated 10-08-98 on the following schedule.

SCHEDULE

“Whether the action of the management of State Bank of India in terminating the services of Shri Vinod Bhauraoji Parate is legal and justified? If not to what relief the workman is entitled?”

Shri Vinod Bhauraoji Parate has submitted Statement of Claim that he was working as Local Dak Runner in State Bank of India, Wardha (Main Branch) from 16-10-94 till 11-10-96 with break in service. He worked about 365 days continuously.

His appointment was made as a Local Dak Runner by an oral order. For doing this job he was paid Rs. 0.75 paise for distributing each envelope. He was getting payment through cheque by State Bank of India, Wardha. On 12-10-96 the manager of State Bank of India, Wardha (Main Branch) terminated his service by an oral order. His termination was illegal. He claimed reinstatement with full back wages.

The management of State Bank of India contested the case that for distributing the envelopes of the bank the workman was being paid 0.75 paise per envelope. He was not the employee of the bank. There was no relationship of the master and the servant between the management of the bank and the claimant. He was not selected for any regular post of the bank. As he was not the employee of the bank, no formal notice for discontinuing the work, was given to him. He is not entitled to any relief claimed by him.

The affidavit of the workman V. B. Parate was filed on 03-02-99. He was cross examined on 09-03-99. The workman admitted that he was getting 0.75 paise for distributing each envelope. The payment was made to him on the basis of number of envelopes distributed by him. There was no fixed time for distributing this dak. He never signed any Muster Roll of the bank. V. B. Parate also admitted in the cross examination that there was no advertisement that the post of a Dak Runner is to be filled in the bank. He requires 10 to 12 thousand rupees per month for the maintenance of his family. He is earning this amount for the expenditure of his family.

From the side of management the statement of Shri Kiran S/o Dattatraya Godbole, Branch Manager of the bank was recorded. He stated that V. B. Parate was doing the work of distributing the dak. V. B. Parate was paid 0.75 paise for distributing each envelope. He was not working for full working hours of the bank. V. B. Parate was at liberty to come any time in the bank and report that the envelopes have been distributed. He was not the regular employee of the bank.

I have considered the oral and documentary evidence produced by the parties. Both the parties have submitted their Written Arguments.

From the evidence discussed above it is evident that V. B. Parate was doing work on contract basis. He was not attending the bank for any fixed hours of duty. He was at liberty to come any time during the working hours of the bank and take the envelopes for distribution.

No Appointment Letter was issued to V. B. Parate by the management of the bank. The claimant V. B. Parate was at liberty to do any other job for the maintenance of his family. The statement of the witness V. B. Parate clearly shows that he was earning about 10 thousand rupees per month for the maintenance of his family. He had six persons in his family. There is no record to show that he was getting 10 to 12 thousand rupees per month from the bank. His own statement therefore, shows that no advertisement was made for the post of Dak Runner by the bank when he took up the contract of distributing the dak and settle his rate for distributing each envelope.

In the above circumstances no record regarding the number of working days was maintained in the bank. V. B. Parate was not marking any attendance in the Attendance Register of the bank for his coming to the bank to receive the dak or to report that how much time he took in distributing the dak on any particular day.

That there was no relationship of master and servant between the management of the bank and V. B. Parate.

V. B. Parate was not a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947. No record for his continuous service was maintained in the bank as he was not treated as the employees of the bank.

V. B. Parate was not appointed for the post of Peon or any other Class-IV employee according to the rules of employment for the service in the bank.

As V. B. Parate was not the workman or employee of the bank, no formal notice for discontinuing his work was required to be given. The bank could any time ask him to discontinue the work of distributing the dak.

Thus the management of the bank has not committed any illegality in removing V. B. Parate from the work of distributing the dak of the bank.

ORDER

The action of the management of State Bank of India in terminating the service of Shri Vinod Bhauraoji Parate is legal and justified. V. B. Parate was not an employee of the bank and the management of the bank did not commit any illegality in discontinuing the work of distributing the dak of the bank through claimant V. B. Parate.

V. B. Parate is not entitled to any relief claimed by him.

The reference is answered accordingly.

Date : 17-10-2001

B. G. SAXENA, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3209.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बनारस स्टेट बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पचास को प्रकाशित करती है जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[सं.पल-12012/277/2000-आई आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Benaras State

Bank Ltd. and their workmen which was received by the Central Government on 29-10-2001.

[No. L-12012/277/2000-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, LUCKNOW

PRESIDING OFFICER : RUDRESH
KUMAR

ADJUDICATION

I.D. No. 160/2000

Ref. No. L-12012/277/2000/IR(B-I) dated
10-10-2000

BETWEEN

Rajesh Kumar,
Lahartara, New Basti,
Kabir Math Near Dihba Maduwadih,
Varanasi.

AND

The Divisional Manager,
The Benaras State Bank Ltd.,
Head Office, S-20/52,
A. K. Varuna Bridge, Cantt.,
Varanasi.

AWARD

By order No. L-12012/277/2000/IR(B-I) dated 10-10-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between the Rajesh Kumar and the Divisional Manager, Benaras State Bank Ltd. Varanasi for adjudication. The reference is produced as under :—

“Whether the action of the management of the Benaras State Bank Ltd. in terminating the services of Shri Rajesh Kumar w.e.f. 5-10-1999 is justified? If not, to what relief the workman is entitled for?”

2. The case of the workman Rajesh Kumar is that he is a scheduled caste with educational qualification 8th passed. He was

engaged by the management of the Benaras State Bank Ltd., Nai Sarak branch, Varanasi city from 14-7-97 as a Water Boy and Sub-Staff. He continuously worked in the said bank from 14-7-97 to 4-10-99. His daily wage was Rs. 30 per day. In addition to the work of Water Boy he was given other works of the bank and worked for whole day. The duties performed by him were the same done by the Sub-staff. His total working days from 14-7-97 to 4-10-99 were 607 days and in this way he worked 240 days in 12 months. He has also alleged that on 4-10-1999, the newly appointed branch manager of the Nai Sarak Branch Sri Ram Kamal Tewari enquired about his caste and on being informed that he belong to scheduled caste community he orally directed him not to come on duty from the next day i.e. 5-10-1999. He requested him at several occasions to give him duty and keep him engaged but deaf ears were given to his cause. The management did not comply with the provisions of section 25F of the I.D. Act, 1947 by denying retrenchment compensation notice pay and other pecuniary benefits admissible to a workman under law.

3. The claim of the workman is contested by the bank management. It is denied that the workman was given any appointment as Water Boy or he worked for more than 240 days in 12 months as a daily wager. It is pleaded that section 25F of the I.D. Act, is not attracted in his case. However, it is admitted that workman Rajesh Kumar was given contract for filling water for consumption of the employees and customers. The bank office is situated at second floor and drinking water was required to be brought from the ground floor as there was no arrangement of pump etc. at that time. It was hardly 30-40 minutes work to fill up containers. The workman was never engaged for the whole day, nor he was given any other assignment as claimed in the claim statement. In the period mentioned in the claim statement some other person namely Prabhu Prasad was also given contract and he used to discharged contractual function of filling containers. Both the parties filed documentary evidence and examined oral evidence on affidavits. The evidence given by the parties would be discussed a bit later.

4. It is not denied that Rajesh Kumar worked in the bank. According to management he was given contract and payments were made to him as per stipulations of the agree-

ment. He was not engaged as a daily wager nor he was given appointment to discharge duties of Water Boy/Sub Staff. The workman, on the other hand, disputed this fact and alleged that his engagement was as a daily wager and not as a contractor. So, the main issue is to judge the status of the workman Rajesh Kumar, whether a daily wager or a contractor. If he was arranging drinking water on contract, the provisions of section 25F will not apply but in case the workman succeeded in proving his continuous engagement as a daily wager for purposes of arranging drinking water at the second floor and discharging other bank functions his case may be under section 25B read with section 25F of the I.D. Act, 1947.

5. The workman in his oral statement has detailed period of his engagement. He has also filed a chart giving details of the period of works for which payments were received and also the number of days worked. Likewise, he has also filed a list showing details of works, normally discharged by the sub-staff. This list gives date, payments and also the nature of work assigned to him. In addition to this list, he has filed a copy of journal issued by the Benaras State Bank Ltd. which shows his standing alongwith another employee inside the bank. A number of vouchers have been filed suggesting payments to the workman. The management has not disputed the vouchers but has claimed that the payments were made to the contractor and not to Rajesh Kumar as a Water Boy. In view of the admitted payments it seems necessary to examine oral statements of the witness. Workman examined himself and he was thoroughly cross-examined by the learned A/R of the management. He retreated the fact of his having work continuously from 14-7-97 to 4-10-99. The workman admitted that the word contractor was written by him on Exbit-99 and Exbit-100. He has also admitted that payments were made in the name of Prabhu Prasad from 5-5-99 to 31-7-99. In the statement of claim it is specifically pleaded that Prabhu Prasad is the real brother of the Rajesh Kumar. This fact is not denied by the management. Three documents Ex. T-1, Ex. T-2 and Ex. T-3 bear signature of Prabhu Prasad. This witness stated that he prepared the documents but signed by Prabhu Prasad for the purposes of payment. If the cross-examination is scrutinized it leads to show that payment up to 5-5-99 to Rajesh Kumar is not under dispute. Further more a glance over

the payment vouchers indicates that the workman discharged various duties, normally done by the sub staff. Ex-1 to Ex-50 of the payments vouchers are admitted by the management. On the back of these admitted vouchers signatures of Rajesh Kumar have not been disputed. This indicates that various miscellaneous works of the bank was done by Rajesh Kumar and he was paid expenses from the contingency.

6. The other admitted vouchers are related to payment of wages @ Rs. 30 per day. Ex-51 dt. 11-7-97, Ex-54, Ex-55, Ex-56, Ex-57, Ex-58, Ex-59 and others payment vouchers of the bank mentions Rajesh Kumar as Water Boy. Likewise, other vouchers i.e. Ex-60, Ex-61, Ex-62, Ex-78, Ex-80 mention Rajesh Kumar as Water Boy. Not a single voucher mention the workman as a contractor. The consistent case of the workman is that he was engaged as a Water Boy/Sub Staff as daily wager on payment of Rs. 30 per day. The payments have been made @ Rs. 30 per day as wages, giving designation of workman "Water Boy" as mentioned earlier. The work contractor is not mentioned in any of the documents. The management did not file any agreement indicating the period of agreement and the work covered by the agreement. Arranging drinking water was a continuous need and the vouchers indicate that Rajesh Kumar arranged drinking water for the employees as well as customers on the second floor where the bank office was situated. No doubt, some of the vouchers bear signature of Prabhu Prasad but as stated by the workman, demands were made in his signature but Prabhu Prasad was asked to sign for taking payments. This appears to be a device to defeat the claim of the workman. Mr. Sathir Kumar, the then Manager of the bank examined himself to substantiate employer version. In first line of his cross examination he admitted that Rajesh Kumar was engaged for arranging water on the second floor of the bank and the water was to be arranged from ground floor. This admission substantiates workman's version that he was engaged for arranging water. No doubt this witness has given details of working and also stated about contract to arrange water but he did not produce any document to suggest that Rajesh Kumar was given contract to arrange water. For such contract, tenders were necessary including the daily rates but there is no such documents. If Sri Rajesh Kumar was appointed as a contractor there was no occasion to

mention 'Water Boy' in the payment vouchers. The case set up by the management is not just worthy.

7. It has been observed earlier that some of the vouchers are in the name of Prabhu Prasad. All other vouchers for more than 2 years are in the name of Rajesh Kumar who had received payments and signed on the back of the vouchers. From perusal of the chart it appears from July 1997 to June 1998 Rajesh Kumar worked for 292 days and from May 1998 to April 1999 for 264 days. This working period are fully proved by the evidence and also by the oral testimony of the workman. Thus, in the facts and circumstances of the case, the workman successfully discharged his onus to prove continuous service for more than 240 days in 12 months and his period of engagement in the said years brought his case in the definition of 'continuous service' defined under section 25 B of the I.D. Act. In view of the said fact the provisions of section 25 F was applicable and the management was under statutory obligations to pay retrenchment compensation and other pecuniary benefits to the workman. It is admitted that the payments were not made as per provision of section 25F of the I.D. Act. Accordingly, the discharge of the workman from 5-10-99 was void-ab-initio.

8. The question for consideration whether the relief of continuity can be allowed in favour of the workman. In view of the fact that the bank arranged pumps to fetch water for drinking purposes from July 2001. This fact also admitted by the workman in his cross examination that the bank arrange separate pump to arrange drinking water on the second floor. Taking this admitted fact into consideration, the continuity in favour of the workman can not be granted after June 2001.

9. The materials on record do not suggest existence of a post of Water Boy at the bank. In absence of any post, the workman can not be granted relief of reinstatement. However, he is entitled to relief of continuity as a Water Boy from the date his services were terminated i.e. 5-10-99 upto June 2001 as the need of water was continuous and work was available.

10. Thus, in the facts and circumstances of the case the award is as follows:—

- (i) the services of the workman Rajesh Kumar was illegally terminated

w.e.f. 5-10-99 and was void-ab-initio. Sri Rajesh Kumar, the workman is entitled to continuity as a Water Boy from the date of termination till June 2001; and

(ii) that the workman is entitled to full wages on the rate admissible to a daily wager in the bank revised from time to time.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.अ. 3210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ राजस्थान लि. के प्रबंधन के सबूद नियोजकों और उनके कर्मचारियों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[सं.एल-12011/9/99/आई.आर. (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3210.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Bank of Rajasthan Ltd. and their workman which was received by the Central Government on 29-10-2001.

[No. L-12011/9/99-IR(B-I)]
AJAY KUMAR, Desk Officer

अन्वय

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर।

आदेश संख्या—एल-12011/9/99/आई.आर. (बी-1)
16/8/99

प्रकरण संख्या:—सी.जी.आई.टी./जे-50/99

अखिल भारतीय बैंक ऑफ राजस्थान कर्मचारी [सं. 59, पटेल कॉलोनी, सरदार पटेल मार्ग, सी-एनएम, जयपुर।

—प्रार्थी

अनाम

महाप्रबंधक (आपरेशन)
बी बैंक ऑफ राजस्थान लिमिटेड,
केन्द्रीय कार्यालय सा-3, सरदार पटेल मार्ग,
सी स्क्रीम, जयपुर।

—अप्रार्थी

प्रार्थी संघ की ओर से श्री आर.सी. जैन।
अप्रार्थी की ओर से श्री अशोक फतेहपुरिया।
पंचाट दिनांक 08-10-2001

पंचाट

केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे एड में अधिनियम कहा गया है) की धारा 10 की उपधारा (1) के खण्ड-घ के प्रावधानों के अन्तर्गत उक्त आदेश के जर्गन न्याय निर्णय हेतु निर्देशित किया गया :—

“Whether the action of management changing the officiating allowance vide their circular dated 5-1-98 contrary to the settlement dated 19-10-66 para 9.11 in contravention of Section 9(A) of I. D. Act, 1947 is justified? If not, what relief union workmen is entitled to and from what date?”

अखिल भारतीय बैंक ऑफ राजस्थान कर्मचारी संघ (जिसे बाद में संघ कहा गया है) की ओर से यह उल्लेख करने हेतु क्लेम प्रस्तुत किया गया कि संघ एक पंजीकृत श्रमिक संगठन है तथा बैंक ऑफ राजस्थान (जिसे बाद में बैंक कहा गया है) में कार्यरत लिपिकीय स्टाफ एवं अधीनस्थ स्टाफ संघ के सदस्य हैं। बैंक में कार्यरत लिपिकीय स्टाफ एवं अधीनस्थ स्टाफ के वेतन व भत्ते उद्योग स्तर पर होने वाले द्विपक्षीय समझौते के अनुसार निर्धारित होते हैं। बैंकिंग उद्योग में कार्यरत श्रमिकों के वेतन व भत्ते के निर्धारण हेतु दिनांक 19-10-66 को उद्योग स्तर का एक द्विपक्षीय समझौता हुआ जो कि बैंक में कार्यरत लिपिकीय एवं अधीनस्थ स्टाफ पर लागू है, जिसके अन्वये 9-10 व 9-11 में बैंक द्वारा किसी भी श्रमिक से उच्च श्रेणी का कार्य लिये जाने व स्थानान्तरण भन्ना दिये जाने तक इस भत्ते की गणना किये जाने के प्रावधान है। दिनांक 5-1-98 के परिपत्र द्वारा बैंक ने द्विपक्षीय समझौते के प्रावधानों से अनुचित एवं अवैध संशोधन करने हेतु अधीनस्थ स्टाफ श्रमिकों द्वारा लिपिकीय संवर्ग में स्थानापन्न करने पर मिलने वाले स्थानापन्न भत्ते कम कर दिये। अधिनियम की चतुर्थ अनुसूची के आर्टिकल नम्बर-3 के अनुसार कर्मचारी को मिलने योग्य क्षतिपूर्ति व अन्य भत्ते ऐसी शर्त है जिसमें अलाभकारी परिवर्तन करने से पूर्व उक्त अधिनियम की धारा 9-ए के अन्तर्गत प्रभावित श्रमिक को नोटिस देना अनिवार्य है। विपक्षी ने नोटिस दिये बिना ही श्रमिकों को मिलने वाले स्थानापन्न भत्ते में कमी कर दी है जो पूर्णतया अनुचित एवं अवैध है। प्रार्थना की गई कि यह घोषित किया जाये कि परिपत्र दिनांक 5-1-98 द्विपक्षीय समझौता दिनांक

19-10-66 के अनुच्छेद 9-11 के विपरीत होने के कारण उचित व वैध नहीं है एवं परिपत्र दिनांक 5-1-98 अधिनियम की चर्चा अनुसूची के पार्टिस नम्बर-3 के अनुरूप सेवा शर्तों में परिवर्तन है जो कि अधिनियम की धारा 9-ए के अनुरूप नोटिस दिये बिना किये जाने के कारण अनुचित एवं अवैध है एवं निरस्त किये जाने योग्य है। यह भी घोषित किया जाये कि बैंक कर्मचारी द्विपक्षीय समझौता दिनांक 19-10-66 के पैरा 9-11 के अनुसार स्थानापन्न भत्ता प्राप्त करने तथा पूर्व में कम भुगतान की गई स्थानापन्न भत्ते की राशि एग्रीयर के रूप में प्राप्त करने के अधिकारी है।

अप्रार्थी की ओर से जवाब में प्रारम्भिक आपत्तियों की गई कि संघ का विपक्षी सम्बन्ध में कोई अस्तित्व नहीं है। संघ मान्यता प्राप्त यूनियन नहीं है व विवाद विपक्षी सम्बन्ध के अधिकांश कर्मचारियों अथवा मान्यता प्राप्त यूनियन द्वारा नहीं उठाया गया, इस कारण अधिनियम के अन्तर्गत धारा 2(क) के अन्तर्गत यह औद्योगिक विवाद नहीं है। अधिनियम की धारा 9-ए केवल उन मामलों में लागू होती है जहां कि प्रबन्धक अधिनियम में वर्णित अनुसूची-4 में उल्लिखित विषयों में कोई परिवर्तन कर रहे हों। विपक्षी द्वारा दिनांक 5-1-98 को जारी किया गया परिपत्र द्विपक्षीय समझौता दिनांक 19-10-66 में नये की गई शर्तों के मूल परिप्रेक्ष्य में स्पष्टीकरण किये जाने के संवन्ध में है जिस कारण अधिनियम की धारा 9-ए लागू नहीं होती व निर्देश शर्देश अधिनियम के प्रावधानों के अन्तर्गत नहीं है। प्रस्तुत मामला अधिनियम के साथ संलग्न अनुसूची-4 के अन्तर्गत नहीं आता। यह भी उल्लेख किया गया कि स्थानापन्न भत्ता कभी भी यदि उस पद पर पदोन्नति कर दी जाये तो पदोन्नति के फलस्वरूप जो राशि प्राप्त होगी उस राशि में अधिक राशि स्थानापन्न भत्ते के रूप में नहीं हो सकती, इसलिये भी अनुसूची-4 के अन्तर्गत स्थानापन्न भत्ता नहीं आता। यह भी आपत्ति की गई कि यदि समझौते की व्याख्या में कोई विवाद है तो उस हेतु धारा 36-ए के प्रावधानों के अन्तर्गत अधिकरण द्वारा व्याख्या की जा सकती है व इस हेतु विशेष विवाद सरकार द्वारा न्यायाधिकरण को प्रेषित करना आवश्यक है। क्लेम के अग्रद्वारा जवाब में इस बाबत अनभिज्ञता प्रकट की गई कि संघ पंजीकृत है अथवा नहीं। दिनांक 19-10-66 का द्विपक्षीय समझौता स्वीकार किया गया। यह उल्लेख किया गया कि दिनांक 19-10-66 का द्विपक्षीय समझौता इसा जिसमें अधीनस्थ स्टाफ व लिपिकीय स्तरों की वेतन शृंखला निम्न प्रकार थी —

(अ) (वेतन शृंखला अधीनस्थ स्टाफ (रूपों में)

92-2-126-ई बी -2-130-3-145

(1-1 5 2) वर्ष

(ब) वेतन शृंखला लिपिकीय स्टाफ

154-6-166-7-210-12-309-15-324-ई बी -10-114-23-460

(1-2 5 9 1 3 2) वर्ष
दिनांक 5-1-98 को परिपत्र भी जारी करके स्वीकार किया गया परन्तु उक्त परिपत्र द्विपक्षीय समझौते की मूल भावना के अनुरूप जारी होने का कथन किया गया। यह भी उल्लेख किया गया कि प्रस्तुत मामले में विवाद का निर्णय राष्ट्रीय न्यायाधिकरण द्वारा ही किया जा सकता है इस अधिकरण के द्वारा नहीं, क्योंकि उस विवाद के निर्णय में जो श्रम निकलेगा वह सारे भारत की बैंकिंग इण्डस्ट्री पर व सारे भारत के राज्यों में स्थित बैंक के कर्मचारियों पर प्रभाव डालेगा। 1966 में समझौता लागू होने के पश्चात् वेतन शृंखला में परिवर्तन हुआ, किन्तु उसमें प्रभावित हुए मध्य प्रावधानों में परिवर्तन नहीं किया गया। यदि संघ को इस मांग को स्वीकार कर लिया जाए तो इसका आशय यह होगा कि यदि किसी अधीनस्थ स्टाफ में लिपिकीय स्तरों में कार्य करवाया जाता है तो उन्हें स्थानापन्न भत्ते के रूप में जो राशि देय होगी उसमें कम राशि उस कर्मचारी को यदि लिपिकीय स्तरों में स्थाई कर दिया जाता है तो स्थाई किए जाने पर देय होगी, जो किसी प्रकार में मृगय नहीं है।

पक्षकारों के अभिकथनों के आधार पर निम्नांकित विवाद बिन्दु बनाए गए :—

- (1) आया विपक्षी बैंक में कार्यरत लिपिकीय स्टाफ एवं सर्वोडिनेट स्टाफ प्रार्थी संघ के सदस्य है ?
- (2) आया जवाब की प्रारम्भिक आपत्ति संख्या 1 के अनुसार संघ द्वारा उठाया गया विवाद औद्योगिक विवाद अधिनियम की धारा 2 (क) के अन्तर्गत "औद्योगिक विवाद" नहीं है ?
- (3) आया जवाब की प्रारम्भिक आपत्ति संख्या 1 के अनुसार संघ द्वारा उठाया गया विवाद व निर्देश "औद्योगिक विवाद" के प्रावधानों के अन्तर्गत नहीं है, यदि हा तो इसका प्रभाव ?
- (4) आया संघ द्वारा उठाये गये विवाद के गुणवर्ण पर सुनवाई का अधिकार इस अधिकरण को नहीं है ?
- (5) आया विपक्षी बैंक द्वारा जारी परिपत्र दिनांक 5-1-98 द्विपक्षीय समझौता दिनांक 19-10-66 के अनुच्छेद 9-11 के विपरीत है व औद्योगिक विवाद अधिनियम, 1947 की धारा 9-ए का उल्लंघन करता है ?
- (6) संघ अथवा विपक्षी बैंक के कर्मचारी क्या सहायता प्राप्त करने के अधिकारी है ?

प्रार्थी की ओर से जी. पी. गुप्ता का अपय-पत्र प्रस्तुत किया गया, जिस पर प्रतिपत्ति करने का अवसर प्रार्थी के विद्वान अधिवक्ता को दिया गया। प्रत्येकीय माध्य में प्रार्थी की ओर से दस्तावेज डक्यू 1 से डक्यू-5 की प्रतिलिपि प्रस्तुत की गई। अप्रार्थी की ओर से भवर सिंह पंवार का अपय-पत्र प्रस्तुत किया गया जिस पर

प्रतिपरीक्षा करने का अवसर प्रार्थी के विद्वान प्रतिनिधि को दिया गया। प्रमुखी माध्य में प्रतिनिधि वेतन श्रद्धालु का चार्ट एम-1 प्रस्तुत किया गया।

बहस गुनी गई एवं पत्रावली का अवलोकन किया गया।

बनाए गए विवाद विन्दुओं का विनिश्चय निम्न प्रकार किया जाता है ---

विन्दु संख्या --1 प्रार्थी की ओर से बी. पी. गुप्ता का कथन है कि बैंक में कार्यरत लिपिकीय स्टाफ व अधीनस्थ स्टाफ संघ के सदस्य हैं। उक्त उक्त सदस्यों की संख्या 800 होता बताई है। इसके विपरीत अप्रार्थी की ओर से इस माध्य के खण्डन में कोई माध्य प्रस्तुत नहीं की गई। अतः यह प्रमाणित होता है कि बैंक में कार्यरत लिपिकीय स्टाफ एवं अधीनस्थ स्टाफ संघ के सदस्य हैं।

विन्दु संख्या --2, 3, 4 अप्रार्थी के विद्वान अधिवक्ता ने उक्त विन्दुओं पर जोर नहीं दिया है, अतः उक्त विन्दुओं का विनिश्चय अप्रार्थी के विन्दु किया जाता है।

विन्दु संख्या --5 द्विपक्षीय समझौता दिनांक 19-10-66 प्रदर्श एम-डब्ल्यू-1 के बारे में कोई विवाद नहीं है। इस बारे में भी कोई विवाद नहीं है कि बैंक द्वारा परिपत्र दिनांक 5-1-98 प्रदर्श एम-डब्ल्यू-2 जारी किया गया। इस बारे में कोई विवाद नहीं है कि परिपत्र दिनांक 5-1-98 जारी किए जाने से पूर्व बैंक में कार्यरत अधीनस्थ स्टाफ को कोई सूचना अधिनियम की धारा 9-ए के अन्तर्गत नहीं दी गई। द्विपक्षीय समझौता दिनांक 19-10-66 का खण्ड 9.11 एवं बैंक द्वारा जारी परिपत्र दिनांक 5-1-98 का उल्लेख करना उचित होगा जो निम्न प्रकार है :-

द्विपक्षीय समझौता

"9.11 In supersession of paragraph 6.56 of the Desai Award—

(a) If a workman other than subordinate staff officiates in a post in a higher cadre for a period of 10 days or more, he shall be paid an officiating allowance for the period for which he officiates, on the following basis :

(i) Where the basic pay of the permanent incumbent exceeds the basic pay of the person officiating, the officiating allowance shall be 15 per cent of the basic pay of the person officiating or the difference between the two basic pays whichever is less, provided that in no case will the officiating allowance be less than 7-1/2 per cent of the basic pay of the person officiating ;

(ii) Where the basic pay of the permanent incumbent is equal to or less than that of the person officiating the officiating allowance shall be 7-1/2 per cent of the basic pay of the person officiating.

(b) If a member of the subordinate staff officiates in the clerical cadre he shall be paid officiating allowance at the rates mentioned in sub-clause (a) above

or the difference between his basic pay and starting basic pay of the clerical scale in that area whichever is higher. Such officiating allowance will be payable pro-rata for each day of work in the clerical cadre without any limitation as to the number of days for which he officiates."

Circular No. 50/PER/4/5107/98 Dated : 5-1-98

GUIDELINES FOR PAYMENT OF OFFICIATING ALLOWANCE TO SUB STAFF

Vide Circular letter No. 448/PER/63/96 dated 13th July, 1996, the clarification for payment of officiating allowance to subordinate staff was issued. We are receiving queries from Regional Offices as to whether the clarification as contained in para (iii) of the aforesaid circular is also applicable on the Sub-staff who are getting higher basic pay than the starting basic pay in clerical cadre.

We have again examined the matter on the basis of the guidelines received from Indian Bank's Association and are reproducing the said guidelines, for payment of officiating allowance to sub-staff, as under:

"If a workman other than subordinate staff officiates in a post in a higher cadre for a continuous period of 7 days or more he shall be paid an officiating allowance, for the period for which he officiates, on the following basis:

(i) Where the basic pay of the permanent incumbent exceeds the basic pay of the person officiating the officiating allowance shall be 15 per cent of the basic pay of the person officiating or the difference between the two basic pays, whichever is less, provided that in no case the officiating allowance be less than 7.5 per cent of the basic pay of the person officiating;

(ii) Where the basic pay of the permanent incumbent is equal to or less than that of the person officiating, the officiating allowance shall be 7.5 per cent of the basic pay of the person officiating ;

(iii) If a member of the subordinate staff officiates in the clerical cadre, he shall be paid officiating allowance at the rates mentioned as above or the difference between his basic pay and the starting basic pay of the clerical scale whichever is higher. Such officiating allowance is payable pro-rata for each day of work in the clerical cadre without any limitation as to the number of days for which he officiates.

(iv) The provisions in para (iii) is operative only where subordinate staff is drawing less basic pay compared to the starting basic pay in the clerical cadre, when the position is otherwise i.e. basic pay of the person officiating is more than the starting basic pay of the clerical cadre, provisions of para (ii) are applicable

Following illustrations shall clarify the position further :—

1. When a clerk at Basic pay of Rs. 2240 is on leave and the basic pay of sub-staff who officiates is Rs. 1930.

Since the Basic pay of the person officiating is more than the starting Basic Pay of Clerical Cadre i.e. Rs. 1750 the allowance shall be payable as per clause (ii) i.e. Rs. 144.75 (7.5 per cent of Rs. 1930).

2. When a clerk at Basic pay of Rs. 2240 is on leave and the basic pay of sub-staff who officiates is Rs. 1690.

Since the Basic pay of the person officiating is less than the starting Basic pay of Clerical cadre, the allowance shall be calculated as per clause (iii).

15 per cent of Rs. 1690 : Rs. 253.50.

OR

Difference of Basic pay of the person officiating and the person against whom change is given : Rs. 550

Amount whichever is less

OR

Rs. 253.50 (If the lesser amount is worked out as difference of BPs, it should not be less than 7.5 per cent of BP of the person officiating).

Difference between Basic Pay of sub-staff and

starting basic pay of

clerical cadre : Rs. 60

Amount whichever is

higher : Rs. 253.50

Allowance payable

would be : Rs. 253.50

Branches/offices are advised to be guided and ensure payment of officiating allowance to the subordinate staff accordingly.

Sd/-

GENERAL MANAGER (OPERATIONS)"

अधिनियम की धारा 9-ए का उल्लेख किया जाना भी मसंगत है, जो निम्न प्रकार है:—

9-A. Notice of change ---No employer, who proposes to effect any change in the conditions of service appli-

cable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,---

- (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change---

- (a) where the change is effected in pursuance of any settlement or award; or
- (b) Where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service Rules, Revised Leave Rules, Civil Service Regulation, Civilians in Defence Services) (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि परिपत्र दिनांक 5-1-98 के द्वारा अधीनस्थ स्टाफ के द्वारानियुक्त संवर्ग के पद पर स्थापना किए जाने के फलस्वरूप स्थापनापत्र भत्ता जो कि द्विपक्षीय समझौता दिनांक 19-10-66 के अनुसार देय था जिसमें कमी की गई है। उक्त कमी अधिनियम के साथ संगत अनुसूची-4 के आईएम 1, 2, 3 के अन्तर्गत आती है। इसी ओर प्रार्थी के विद्वान अधिकता का तर्क है कि स्थापनापत्र भत्ते में उक्त परिवर्तन अनुसूची-4 के अन्तर्गत नहीं आता। स्टेटमेंट ऑफ क्लेम में उक्त परिवर्तन को अधिनियम की अनुसूची-4 के आईएम नम्बर-3 के अन्तर्गत होने का उल्लेख किया गया है। अतः इस बाबत विचार करने की आवश्यकता नहीं है कि स्थापनापत्र भत्ते में उक्त परिवर्तन अनुसूची-4 के आईएम संख्या-1 व 2 के तहत आता है या नहीं। चतुर्थ अनुसूची का आईएम नम्बर-3 प्रतीकान्वित एवं अन्य भत्तों के बारे में है। अन्य भत्तों के तहत स्थापनापत्र भत्ता "क्योरर" सम्मिलित नहीं होता, प्रार्थी के विद्वान अधिकता इस बारे में कोई सन्तोषजनक कारण नहीं बना सके हैं। अन्य भत्तों में मेरी राय में स्थापनापत्र भत्ता भी सम्मिलित होता है। स्थापनापत्र भत्ते में ऐसा परिवर्तन जो कि बैंक में कार्यरत अधीनस्थ स्टाफ को प्रभावित करता है, अधिनियम की धारा 9-ए के अन्तर्गत बिना बैंक में कार्यरत अधीनस्थ स्टाफ को सूचना दिए नहीं किया जा सकता। यह विवादित नहीं है कि परिपत्र दिनांक 5-1-98 में अधीनस्थ स्टाफ जो कि नियुक्त के पद पर स्थापनापत्र कार्य करता है, के फलस्वरूप मिलने वाले स्थापनापत्र भत्ते की परिपत्र दिनांक 5-1-98 के खण्ड-4, जो कि निम्न प्रकार है:

“(iv) The provisions in para (iii) is operative only where subordinate staff is drawing less basic pay compared to the starting basic pay in the clerical cadre, when the position is otherwise i.e. basic pay of the person officiating is more than the starting basic pay of the clerical cadre, provision of para (ii) are applicable.”

के द्वारा ऐसा परिवर्तन किया गया है जो कि इस स्थानापन्न भत्ते से कमी करता है। इस प्रकार परिपत्र दिनांक 5-1-98, द्विपक्षीय समझौता दिनांक 19-10-66 का अनुच्छेद 9-11 के विपरीत होने के कारण अधिनियम की धारा 9-ए का उल्लंघन करता है।

विस्तृत सूचना—6 बैंक द्वारा जारी परिपत्र दिनांक 5-1-98 का खण्ड संख्या-4 जिसका उल्लेख ऊपर किया जा चुका है अधिनियम की धारा 9-ए का उल्लंघन होने के कारण अवैध है एवं प्रारम्भ में शुद्ध है। बैंक में कार्यरत कर्मचारी द्विपक्षीय समझौता दिनांक 19-10-66 के पैरा 9-11 के अनुसार स्थानापन्न भत्ता प्राप्त करने के अधिकारी होंगे। यदि उन्हें परिपत्र दिनांक 5-1-98 के पत्रस्वरूप का राशि प्राप्त हुई हो तो वह बचत बैंक पर अधिक उक्त राशि प्राप्त करने के अधिकारी होंगे।

पंचाट की प्रतिनिधि केन्द्रीय सरकार का अधिनियम की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

जगदीश प्रसाद शर्मा, पीछापोत अधिकारी

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एंड जयपुर के प्रशासन के संबंध नियोजकों और उनके कर्मचारियों के बीच, प्रमुख में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम स्थानांतरण जयपुर के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार का 29-10-2001 को प्राप्त हुआ था।

[सं.एल-12011/153/87-D-II(ए)/आई आर बी III/(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3211.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 29-10-2001.

[No. L-12011/153/87-D-II(A)/IR(B-III)/(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT|LC|R/203/90

Presiding Officer : Shri K. M. Rai.

1. Sureshchandra Gupta S/o Shri Narsinghlalji, 13 Teachers Colony, Sagod Road, Ratlam (MP).
2. Kamlesh Kothari S/o Chamdmal Kothari, 2, Palace Road Ratlam.
3. Ashok Kumar Dangi, S/o Chandmalji Dangi, Chowmukhi Pul Ratlam.
4. Jagdish Chandra Maheshwari, S/o Ramchandra Maheshwari 548, Katjunagar Ratlam (MP).
5. Rajendra Kumar Agrawal, S/o Babulal Agrawal, B/12, Sr. MIG Mhow Road, Ratlam.
6. Ajaya Shah S/o Chandulal Shah, Station Road, Ratlam.
7. Jitendra Singh S/o Shri S. M. Shah, 595 Katjunagar, Ratlam.
8. Miss Bharti Ojha D/o Shri Gourishankar Ojha 95 Biharlal Marg, Ratlam.

Incorporated on

15-10-2001

9. Shri Subhash Chandra Gupta, "
10. Shri Raj Kumar Malviya "
11. Shri Rajendra Kumar Vijay "

Versus

General Manager

State Bank of Bikaner and Jaipur

Head Office, Tilak Marg, Jaipur

Branch Manager

State Bank of Bikaner and Jaipur

Station Road Ratlam.

Non-applicants.

AWARD

Passed on this 5th day of July, 2001

1. The Government of India Ministry of Labour vide order No. L-12011/153/87-D-II(A)/IRB, III dated 16th October, 1990 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of the SBBJ in terminating the services of workmen mentioned in the Annexure and with effect from the dates shown against their name is justified? If not, to what relief the workmen are entitled?”

2. The case for the workmen is that they were appointed temporarily as clerk-cum-cashier on various dates by the Branch Manager, State Bank of Bikaner and Jaipur, Station road, Ratlam in the year 1976, 77, 78, 79 and 80 vide written appointment orders. The services of the workmen were dispensed with by the bank w.e.f. various dates mentioned in Annexure-A. The workmen had not continuously worked against the clear vacancy in the bank for more than 240 days in a preceding year from the date of their termination due to the managements unfair labour practice. They were neither served with the statutory notice nor paid the retrenchment compensation according to the provisions of Sec-25-F of the I.D. Act, 1947. The Bank had agreed to absorb the workmen in the Bank services with a condition that they shall be treated as fresh employees. Subsequently the bank refused to abide by the terms of agreement.

3. The workmen further alleged that though initially they were appointed for a specific period but their period of employment was extended from time to time. They were regularly performing the duty of a clerk in the bank. Their services were not automatically terminated after the expiry of period of employment. Different persons junior to the workmen were appointed against the clear vacancies and the services of workmen were not regularised by the Bank. The management did not follow the principle of First come last go. The workmen continuously worked in the Bank for a period of about 78 days to 115 days only because the unfair labour practice was adopted by the Bank. The termination of the services of the workmen is therefore illegal and deserves to be quashed. They are entitled to reinstatement with other consequential benefits.

4. The case for the management is that the workmen were appointed in adhoc vacancy. They were appointed not to do any regular kind of duty but to discharge their duty as per terms of contract. They were appointed for fixed period as per contract and therefore their services automatically came to an end after the expiry of the contractual period. Their discontinuance from service does not amount to retrenchment as claimed by them. They had not continuously worked for more than 240 days in a calendar year preceeding the date of termination from service. The provisions of Sections 25-G and 25-F are not applicable in the present case. For the regular appointment as a clerk in the bank, the recruitment rules have been framed and they must be observed for this purpose. The Banking Recruitment Board has been constituted for conducting the competitive examination for the recruitment of clerk in the Bank. The vacancies are notified and the applications are invited for the same. In the present case, all these formalities were not observed in giving the employment to the workmen. In such a circumstance, they cannot claim the regular appointment as a clerk through means of back door entry.

5. The management further alleges that as per bipartite settlement, the Bank is authorised to appoint temporary workmen for a period not exceeding 90 days in the case of exigency. The Bank never exercised unfair labour practice against the workmen. The workmen never applied for regular appointment as clerk in the Bank according to the provisions of recruitment rules. The management was not

required to pay retrenchment compensation to the workmen prior to terminating the services as their services were for a contractual period and therefore it came to an end after the expiry of the contractual period. In view of all these facts, the workmen are not entitled to reinstatement with other consequential benefits.

6. The following issues arise for decision in this case and my findings thereon are given hereinafter:—

1. Whether the workmen are entitled to reinstatement with back wages and other consequential benefits.

2. Relief and costs ?

7. Issue No. 1 : It is an admitted fact that the workmen were appointed temporarily for a particular period to perform the duty of clerk-cum-cashier in the Bank. It is also an admitted fact that for the appointment of clerk-cum-cashier, the recruitment rules has been framed and they must be followed for making such appointment in the instant case. The vacancies are notified and the applications are invited for the same. The candidates had to face competitive examination and after they clear this test, they have to face interview also. The successful candidates are given the regular appointment as clerk in the Bank. In the present case, no such formality was observed in giving appointment to the workmen. They were given appointment by the Bank for a fixed period of time only and after the expiry of this period, their employment automatically came to an end. They also did not work for 240 days in a calendar year preceeding the date of their termination from service. At the same time the Branch Manager was not competent to appoint the clerk in the Bank as he was not authorised to do so. In this way, the initial appointment of the workmen was not legal and therefore on this basis, they cannot claim any right to this post. Without complying with the provisions of recruitment rules, no person can be appointed clerk in the Bank. The employment in the Bank through the method of back door entry cannot be justified. The termination of workmen does not amounts to retrenchment also as they were employed for a fixed period of time as per contract and after the expiry of the period, their employment automatically came to an end. Hence the provisions of Sections 25-F, 25-G and 25-H of I.D. Act are not applicable in the instant case.

8. In view of the above said reasons, it is held that the workmen are not entitled to reinstatement with back wages and other consequential benefits as claimed by them. Issue No. 1 is decided accordingly.

9. Issue No. 2 : In the light of my finding given on Issue No. 1, the workmen are not entitled to any relief as claimed by them. The reference is accordingly answered in favour of the management and against the workmen.

10. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली 30 अक्टूबर 2001

का.प्र. 3212 तथा विवाद अधिनियम 1947 (1947 का 14) का भाग 17 के अनुपकरण में केन्द्रिय सरकार पाण्ड्या ग्राम बैंक व प्रबंधन व सर्वज्ञ नियोजकों को उन पर कर्मकारों के बीच अनुबंध में निर्धारित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चैन्नई के पचाट का प्रकाशित करती है, जो केन्द्रिय सरकार का 29-10-2001 को प्राप्त हुआ था।

[स. एल-12012/31/99-आई आर (बी-1)]

अजय कुमार डेस्क अधिकारी

New Delhi, the 30th October, 2001

SO 3212—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman which was received by the Central Government on 29-10-2001.

[No L-12012 31 99-IR(B I)]

AJAY KUMAR Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday the 14th September, 2001

PRESENT

K. Karthikeyan, Presiding Officer.

Industrial Dispute No 138 2001

(Tamil Nadu State Industrial Tribunal ID No 93/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) between the Workman Smt Nalini Sekar and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

The General Secretary, I Party Claimant
Pandyan Grama Bank Employees
Association,
Virudhunagar

AND

The Chairman, II Party Management
Pandyan Grama Bank,
Virudhunagar

APPEARANCE

For the Claimant M/s P V S Gundhan, D. Geetha
& Rajani Ramadass, Advocates,

For the Management : Sri NGR Prasad, &
S. Vaidyanathan, Advocates

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act 1947 (14 of 1947) have referred the concerned Industrial Dispute for adjudication vide Order No L 12012 31/99 IR(B-I) dated 10-7-1999

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as ID No 93/99. When the matter was pending enquiry in that Tribunal the Govt of India Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as ID No 138 2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 12-2001. On receipt of notice from this Tribunal the counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 31-7-2001, upon perusing the Claim Statement Counter Statement, the other material papers on record, the documentary evidence let in on either side and upon hearing the arguments of learned counsel on either side and this matter having stood over till this date for consideration this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the demand of the Pandyan Grama Bank Employees Union for appointing Smt Nalini Sekar Messenger as a Clerk on compassionate grounds is justified? If not, to what relief the said workman is entitled?”

2 The averments in the Claim Statement of the I Party Claimant are briefly as follows —

The General Secretary of Pandyan Grama Bank Employees Union has raised this industrial dispute espousing the cause of Smt Nalini Sekar, the workman of II Party/Pandyan Grama Bank. The I party Claimant (herein after referred to as Petitioner) has alleged in the Claim Statement that the concerned workman Smt Nalini Sekar has given a posting as a messenger in the II Party Management Pandyan Grama Bank (hereinafter referred to as Respondent). She was given an appointment after her husband Mr. Sekar an officer of the Respondent Bank died in harness on 13-7-92. Since the concerned workman has completed VIII standard and has the necessary qualification for appointment as a Clerk she applied for compassionate appointment as a Clerk subsequent to the death of her husband. But she was given appointment as a messenger in the Respondent Bank on 9-10-92. The action of the Respondent is clearly contrary to Circular No 2/83

dated 6-1-83 issued on the basis of instructions of Government of India dated 5-7-82. Therefore, the concerned workman neither representation dated 5-11-92 seeking appointment as a clerk as she possessed eligible qualification as per the said Circular No. 2/83 dated 6-1-83. Respondent unilaterally issued dated 6-1-83. The Respondent unilaterally issued a fresh circular No. 45 92 93 on 18-1-1993 by which it has declared that the educational qualification needed for appointment of a widow of deceased employee as a clerk is a pass in S.S.L.C. It is quite patent that the circular is prospective and cannot govern appointments made prior to 18-1-93 as such the same would not apply to the case of the workman. Consequently, the Petitioner made a representation to the Respondent and objected to the said Circular. The Respondent assured the Petitioner that the matter would be suitably redressed and would refer the matter to NABARD by its letter dated 15-5-93. The NABARD in turn, referred the matter to the Government of India by its letter dated 3-6-93. In the meanwhile, the NABARD has clearly indicated that the Government of India letter dated 5-7-92 continues to be operative. Despite the reiteration on the part of NABARD, the Respondent has sent a letter dated 20-6-94 to the workman rejecting her request. The workman accepted the point as a messenger by her letter dated 24-8-94 reserved her right to initiate legal proceedings in respect of her grievance. The action of the Respondent is clearly arbitrary and unreasonable. It amounts to an unfair labour practice. The Respondent is constituted under the provisions of the Regional Rural Banks Act, 1976 and is bound by the instructions of NABARD and also of the Government of India. The Petitioner therefore, raised a dispute before the Labour Enforcement Officer (Central), Tuticorin, by her petition dated 29-10-96. The Management filed a reply dated 4-4-97 making privilege untenable pleas. On failure of conciliation, the Assistant Labour Commissioner (Central) submitted a failure report. On the basis of which the present industrial dispute has been referred for adjudication by this Tribunal. Hence, it is prayed that this Hon'ble Court may be pleased to direct the Respondent to post the concerned workman Smt. Nalini Sekar as a Clerk w.e.f. 9-10-92 with all consequential benefits.

3. The averments in the Counter Statement of the II Party/Management are briefly as follows :—

As per the norms prescribed in the Respondent Bank General Manager's Circular No. 2/83 dated 6-1-83, the bank may as its discretion appoint in the bank in any of the posts in clerical and subordinate cadres. The appointment under this scheme, shall not be made without prior sanction of the Board and to qualify for appointment, a dependent should have passed minimum SSLC/Matriculation or its equivalent examination, provided that in the case of a widow of deceased employee, the minimum qualification would be a pass in the VIII standard. Applicants will be interviewed by selection committee and to be appointed by the Board in order to assess their suitability for the particular post and appointments can be made against specific existing

vacancies or in expectation of any vacancies. So, the pre-requisite for compassionate appointment is possession of minimum qualification and suitability for the post. It needless to maintain that mere possession of minimum qualification will not entitle the dependent to claim appointment in a particular post. The workman was offered with the post of messenger on 9-10-92 much prior to issuance of circular dated 18-1-93 modifying the educational qualification for compassionate appointment. The educational qualification of the workman did not come in the way of her selection. The reason for her non-selection to the post of clerk is her unsuitability for the post and not her qualification. As her husband died in harness on 13-7-92, the bank has taken all efforts to get her appointed on compassionate ground and get the board's approval for her appointment on 19-9-92. The appointment order was issued to her on 9-10-92 advising her to join duty on or before 26-10-92. The concerned workman instead of accepting the appointment requested to bank to give appointment to her brother instead of her. As her brother was over-aged, the bank could not accede to her request and advised her to join duty on 21-11-92. In the meantime, she came with another representation dated 5-11-92 to post her as a Clerk by cancelling her earlier representation requesting appointment of her brother. Her representation was placed before the Board in its meeting on 12-5-94. The Board confirmed the decision already taken in its meeting held on 19-9-92 appointing her as messenger. As per the direction of the Board, the bank advised her to join duty on or before 30-6-94. She did not join duty but requested three months time to join duty for medical reasons. That was also accepted by the Bank. Finally, she joined duty on 24-8-94 and was posted at the branch of her choice. Even though, the workman was found fit for appointment as messenger it was not imperative on the part of the bank to appoint her immediately because the Scheme of appointment on compassionate grounds provides that appointments can be made against specific existing vacancies or in expectation of vacancies. When the workman applied for job on compassionate grounds there were no vacancies of Clerks or Messengers and no vacancies were expected in the near future also. Despite the technical hurdles, in order to relieve the deceased employee's family from the unexpected hardships and distress, the Board of Directors of the Bank decided to appoint her as a messenger. Thus, the bank has acted in a generous manner in granting her employment. As per the Supreme Court decision the consideration for employment on compassionate ground is not a vested right which can be exercised at any time in future. Hence, the petition is liable to be dismissed as devoid of merits.

4. When the matter came up for enquiry before this Tribunal, documents were marked by consent of counsel on either side as Ex. W1 to W9 and M1 to M8. No oral evidence was let in on either side. The learned counsel on either side have advanced their respective arguments.

5. The point for my consideration is :—

"Whether the demand of the Pandyan Grama Bank Employees Union for appointing Smt. Nalini Sekar, Messenger as a Clerk on compassionate grounds is justified? If not, to what relief the said workman is entitled?"

Point :—

The Secretary of Pandyan Grama Bank Employees Association has raised this industrial dispute in respect of Smt. Nalini Sekar, a widow of one Mr. Sekar who worked as an officer in the Respondent Bank. Mr. Sekar died in harness on 13-7-92. After his death, the concerned workman Smt. Nalini Sekar applied for compassionate appointment as a clerk. The Director of Department of Economic Affairs, Banking Division, Ministry of Finance, Government of India had issued a circular dated 5-7-92 to the Chairman of all Regional Rural Banks in respect of scheme for appointment of dependents of deceased employees on compassionate grounds in Regional Rural Banks. The Xerox copy of that circular is Ex. W1. On the basis of that instructions of the Government, the Respondent/Management had issued a circular dated 6-1-83. The xerox copy of that Circular is Ex. W2. It is seen from Exs. W1 and W2 the minimum qualification for a widow of the deceased employee for appointment would be a pass in VIII standard, whereas other dependents of the deceased a pass in SSC/SSLC/Matriculation or its equivalent examination. In those Exs. W1 and W2 it is further stated that for subordinate staff the minimum qualification will be as prescribed by the board for the cadre. Ex. W3 is the xerox copy of the appointment order given to the concerned workman Smt. Nalini Sekar dated 9-10-92 wherein the concerned workman was offered the post of a messenger on compassionate ground. Ex. W4 is a representation given by the concerned workman Smt. Nalini Sekar dated 5-11-93. In that representation she has mentioned that earlier he has requested to give appointment his brother as a clerk and now she had reconsidered her decision and request the Management to give her appointment as a Clerk in the Bank, since the minimum qualification required for a widow of the deceased employee to be appointed for the clerical cadre is only a pass in VIII Standard. Ex. W5 is the xerox copy of the Chairman's Circular dated 18-1-93 issued by the Respondent/Bank administrative office. Along with that circular a modified scheme for appointment on compassionate ground has been enclosed. As per that circular, the minimum eligibility requirement for appointment in clerical cadre for the widow under compassionate ground is a pass in SSLC or equivalent examination. Ex. W6 is the xerox copy of the letter dated 3-6-93 sent by the Deputy Manager, National Bank for Agriculture and Rural Development to the Chairman, Pandyan Grama Bank. In that letter the Chairman of the Respondent/Bank was informed that the matter of staff appointment on compassionate ground has been referred to the Government of India for their decision. Ex. W7 is the xerox copy of the letter dated 22-3-94 to the Respondent/Bank Chairman.

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In that letter it is clearly stated that earlier instructions contained in letter dated 5-6-81 issued to RRBs are still operative. Ex. W8 is the xerox copy of the letter dated 20-6-94 sent by Chairman to the concerned workman Smt. Nalini Sekar, wherein the concerned workman was directed to appear the Head Office on or before 30-6-94 with all relevant records. Accordingly, the petitioner has appeared at Head Office on 30-6-94 and made a representation on the same day requesting three months time limit to join for the duty. Subsequently, she has sent a communication dated 24-8-94 to the Chairman, Pandyan Grama Bank stating that she has recovered from her illness and report at Head Office to accept the order of appointment without prejudice to her appeal requesting the Board of Directors to seek clerical appointment. The xerox copy of one such letter is Ex. W9. Ex. M2 is the xerox copy of the representation given by the concerned workman Smt. Nalini Sekar to the Respondent/Bank General Manager. In that she has stated that she has received the appointment order but requested the Management to give the appointment to her elder brother, who had studied upto B.A. As a reply to her request, under Ex. M3 the Chairman of the Respondent/Bank sent a letter dated 6-11-92 to the concerned workman Smt. Nalini Sekar, stating their inability to consider her request for appointment to her brother and inform her to report for duty at administrative office at Satur on or before 21-11-92 to accept the post of Messenger under compassionate ground. Ex. M4 is the xerox copy of the letter dated 5-11-92 which is marked as Ex. W4. Ex. M5 is the xerox copy of the letter dated 20-6-94 which is marked as Ex. W5. Ex. M6 is the xerox copy of the letter dated 24-8-94 which is marked as Ex. W9. Ex. M7 is the xerox copy of the seniority list as on 1-1-96 in the Respondent/Bank. Ex. M8 is the xerox copy of the seniority list as on 1-9-98 of the Respondent/Bank.

6. In Ex. W2 circular, the qualification for appointment for the widow of the deceased employee is a pass in VIII Standard. That is admitted by the Respondent/Management. Under that scheme itself, it is stated that applicants will be interviewed by a selection committee to be appointed by the board in order to assess their suitability for the particular post. Another condition for such appointment mentioned in the circular is that appointments can be made against specific existing vacancy or in expectation of vacancies. When the xerox copy of that circular is marked by consent as Ex. W2 all these conditions mentioned above available in that Circular have not been disputed by the Petitioner. So from this, it is seen that the pre-requisite for compassionate appointment is possession of minimum qualification and suitability for the post. As it is contended by the Respondent/Management, mere possession of minimum qualification will not entitle the dependent to claim appointment in a particular post. It is also contended by the Respondent that the representation of the Petitioner for appointing her in the clerical post was placed before the Board and the Board in its meeting held on 12-5-94 confirmed the decision already taken in its meeting on 19-9-92 appointing her as messenger. It is also the contention of the Respondent that in order to relieve the

deceased employee's family from the unexpected hardship and distress, the Board of Directors of the Bank decided to appoint her as messenger. It is further argued by the learned counsel for the Respondent that only after assessing the suitability of the Petitioner the Board of Directors have found that she is unsuitable for the post of clerk and the non-selection of the Petitioner for the post of clerk is not on her qualification. From this it is seen that the Board had given approval for her appointment on 19-9-92 for the post of Messenger because she has found unsuitable for the post of clerk. The same has been confirmed by the Board when her representation was placed before the Board in its meeting on 12-5-94. That decision of the Board is in accordance with the scheme for appointment under Ex. W1 which was in force at that time. As per clause 5 Circular VI, the concerned workman Smt. Nalini Sekar was given the post of Messenger after assessing her suitability for that post. So under such circumstances, it cannot be said that the appointment given to Smt. Nalini Sekar as Messenger by the Management of Pandyan Grama Bank is unjustified. So, the demand of the Pandyan Grama Bank Employees Union for appointing Smt. Nalini Sekar, Messenger as a Clerk on compassionate ground is not justified. Thus the point is answered accordingly.

7. In the result, an Award is passed holding that the demand of the Pandyan Grama Bank Employees Union for appointing Smt. Nalini Sekar, Messenger as a Clerk on compassionate grounds is not justified, but the Management of Pandyan Grama Bank can consider her request for appointment as Clerk when the next vacancy arise in clerk post on finding her suitability to that post in preference to others. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th September, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

DOCUMENTS MARKED :

For I Party/Claimant :

Ex. No.	Date	Description
W1	5-7-82	—Xerox copy of the circular issued by the Government of India.
W2	6-1-83	—Xerox copy of the circular No. 2/83. Regarding Scheme for appointment of Dependents of deceased employees on Compassionate grounds.
W3	9-10-92	—Xerox copy of the appointment order of the Petitioner.
W4	5-11-92	—Xerox copy of the representation of the Petitioner to the Management.
W5	18-1-93	—Xerox copy of the Circular No. 45/92-93. With regard to staff Compassionate appointments.
W6	3-6-93	—Xerox copy of the letter from NABARD to the Respondent/Management.

W7 22-3-94.—Xerox copy of the letter from NABARD to the Respondent/Management.

W8 20-6-94.—Xerox copy of the letter from Respondent to Smt. Nalini Sekar.

W9. 24-8-94.—Xerox copy of the letter from Petitioner to the Respondent.

For the II Party/Management :

Ex. No.	Date	Description
M1	28-11-94	—Xerox copy of the Government of India, Department of Per. and Trg. O.M observation of the Supreme Court on Compassionate appointment.
M2	-Nil-	—Xerox copy of the representation from Smt. Nalini Sekar to the Respondent.
M3	6-11-92	—Xerox copy of the letter from Respondent to Smt. Nalini Sekar.
M4	5-11-92	—Xerox copy of the representation from Smt. Nalini Sekar to the Respondent.
M5	20-6-94	—Xerox copy of the letter from Respondent to Smt. Nalini Sekar.
M6	24-8-94	—Xerox copy of the representation from Smt. Nalini Sekar to the Respondent.
M7	1986	—Extract from seniority list.
M8	1998	—Extract from seniority list as on 1-9-98.

नई दिल्ली, 30 अक्टूबर, 2001

का.प्र. 3213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में निदेशित औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 प्राप्त हुआ था।

[सं. एल-12012/97/93-आई प्रार (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 29-10-2001.

[No. L-12012/97/93-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI Y. P. BHATT, INDUSTRIAL
TRIBUNAL, AHMEDABAD

Reference (ITC) No. 15/93

ADJUDICATION BETWEEN

State Bank of India,
C. N. Vidyalaya Campus,
Ambawadi,
Ahmedabad-380015.

. First Party.

AND

The Workman,
(Shri Vijaykumar Jethalal Chopra),
Block No. 7, Shejalnagar Society,
Near G. D. High School,
Saljpur Bogha, Ahmedabad.

... Second Party.

APPEARANCES :

Shri B. K. Oza, Advocate for the first party.

Shri G. K. Parmar, Representative for the second
party.

AWARD

The industrial dispute between the aforesaid parties was referred by the Desk Officer Shri S. K. Jain of the Ministry of Labour, Government of India, New Delhi vide his order No. L-12012/97/93/IR/B-I dt. 22/29-7-1993 to this Tribunal for adjudication. The dispute between the parties as stated in the schedule to the above order relates to the following demand

"Whether the action of the management of State Bank of India in terminating the services of Shri V. J. Chopra, Ex-Clerk-Typist w.e.f. 27-2-91 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

2. Shri V. J. Chopra, hereinafter referred to as "The workman" was working as clerk-typist in the State Bank of India, Ahmedabad, hereinafter referred to as "The Bank" had committed certain irregularities in the savings accounts of about 10 to 11 customers of Naroda Industrial Estate Branch during the period from 8-10-88 to 17-11-88 for which the workman was chargesheeted and a domestic enquiry was conducted against him. The workman had admitted all the charges levelled against him and requested to take lenient view and the Bank had, instead of dismissing the workman, discharged him from the services of the Bank by an order dated 27-2-1991. It is that order which has been challenged by the workman by way of present reference. The workman had filed statement of claim at Ex. 3 alongwith which he had produced Order of Discharge vide Annexure A=Ex. 34. Order of Hon'ble High Court of Gujarat in Spl. C.A. No. 6347/91 vide Annexure B=Ex. 38. Departmental appeal to Dy. General Manager vide Annexure C=Ex. 35. Order of appellate authority and Dy. General Manager confirming the order of discharge passed by the disciplinary authority and

Regional Manager vide Annexure D=Ex. 36, Appointment order of the workman as clerk-typist dt. 12-2-71 vide Annexure E. Order of suspension of the workman vide Annexure F=Ex. 15, Charge sheet issued to the workman vide Annexure G=Ex. 16, reply of the workman to the charge sheet vide Annexure H=Ex. 17 and Show Cause Notice dated 13-12-90 vide Annexure I=Ex. 24. It was stated by the workman in the statement of claim that the first charge against him was regarding the misappropriation of Rs. 19,700; that he had deposited Rs. 4400 and Rs. 15,300 respectively prior to and after the issue of suspension order to him; that he was a clerk-typist and not a cashier or a teller; that he was given extra duty of teller at the time when he was suffering from serious mental depression and that he had begged for apology and assured that such lapses will not take place in future; that the authority of Bank had assured him that if he admits the guilt, the Bank will take a lenient view and will impose penalty other than penalty of dismissal or discharge; that he is having serious family responsibilities and requested the Tribunal to exercise the powers under Section 11-A of the Industrial Disputes Act; that he has not challenged the legality of the enquiry; that he has unblemish record of service right from 1971; that the appellate authority had decided his departmental appeal in a stereo typed manner without applying his mind. Accordingly, the workman requested to reinstate him to his original post with continuity of service and with back wages etc.

3. The Bank had filed its defence statement at Ex. 7 contending inter alia that the sound working of the banking institution rests on the integrity, honesty and efficiency of the employees and the workman; that the confidence of the people at large in the banking institution is the capital of the bank and if that confidence is breached, the banking business would face serious crisis and would paralyse the trade and weaken the nation's strength; that the Bank has a separate set of service rules for its workmen, which are popularly known as "Award Staff" which provide for specific penalties for Gross misconducts and Minor misconducts. The Bank thereafter stated the facts regarding enquiry, admission of the charges by the workman, the finding of the Enquiry Officer. Show cause notice in which it was informed to the workman that the bank had tentatively decided to discharge him from services of the Bank, the workman was also given chances to appear before the disciplinary authority but he failed, passing of order of discharge, filing of Special Civil Application No. 6347 of 1991 before the Hon'ble High Court of Gujarat and withdrawal of the same, the filing of departmental appeal by the workman and confirmation of the penalty imposed by the disciplinary authority. The Bank denied that the order of discharge was illegal, invalid and inoperative. It is submitted that the workman deserved the punishment of dismissal but considering the length of his service, his family circumstances and his voluntary admission of the charges, he was discharged from the services of the bank; that repayment of the amount by the workman does not wipe out the misconduct committed by him; that the workman had voluntarily accepted the duties of a teller and had also executed a bond on 10-9-88; that he very well understood the

responsibilities of a teller and was also paid teller's allowance from time to time. It is denied that the authority of the Bank had assured him of a lighter punishment instead of dismissal or discharge. It is submitted by the Bank that in the present case no powers under Section 11-A of the Industrial Disputes Act could be exercised in view of the decisions of Hon'ble Supreme Court and Hon'ble Gujarat High Court. It is denied that appellate authority had passed order in a stereo typed manner, without applying his mind. It is also denied that punishment is unduly harsh or excessive. The Bank had thereafter narrated certain decisions of the High Courts and submitted that the punishment is proper and adequate considering the gravity of the misconduct committed by the workman; that continuance of the workman in the institution would be harmful and damaging to the interest of the Bank and accordingly, the Bank has requested to dismiss this reference case.

4. The Bank has produced the documentary evidence concerning the domestic enquiry and the same have been exhibited vide Ex. 15 to Ex. 38. Vide Ex. 11, the learned advocate for the workman stated that the legality and validity of the departmental enquiry is not challenged and that the relief is claimed under Section 11-A of the Industrial Disputes Act. Vide Ex. 12, the learned advocates of both the parties stated that they do not want to lead any oral evidence in this case and vide Ex. 13 the learned advocate for the workman has cited and produced an award made by the Industrial Tribunal consisting of Shri R. S. Saxena in Reference (IFC) No. 9/93 between the State Bank of India and the workman Shri Behari Pushottamal Pandya. It was also stated in Ex. 13 that the charge levelled against the workman in that case are also similar to the charges in the present case; that the workman was reinstated in that case by the then Tribunal. The arguments were heard by my learned predecessor but he could not make an award. The learned Shri Parmar for the workman and the learned Shri Bushanbhai Oza for the Bank had advanced their arguments before this Tribunal.

5. Enquiry is admittedly not in dispute. What is to be seen is, whether in the given circumstances of this case, is it possible for this Tribunal to exercise the discretion under Section 11-A of the Industrial Disputes Act for the purpose of awarding a lesser punishment than the discharge from service. It is also not disputed that the workman had admitted the charges levelled against him in reply to the charge sheet, as also during the course of the domestic enquiry. It is also an admitted position that the workman had requested for mercy and had left himself to the tender mercies of the Bank. For properly appreciating the rival contentions of the parties, it would be necessary to have a quick look at the enquiry conducted against the workman.

6. The workman was suspended from services of the Bank vide Ex. 15 dated 5-12-88 with immediate effect pending enquiry into the misconducts alleged to have been committed by the workman and was chargesheeted as per Ex. 16 on 27-1-89 for Gross misconduct as well as for Minor misconduct. It was alleged that 10 savings accounts holder had tendered cash (in all amounting to Rs. 19,700) to the work-

man for being credited to their accounts in the Naroda Industrial Estate Branch during the period from 8th October, 1988 to 17-11-88; that the credit entries were authenticated by the workman but the amount did not appear in the teller's receipt scroll and thus made fictitious credit entries in the accounts and misappropriated the amount of Rs. 19,700. It was also alleged that as teller the workman was entitled to receive the amount below Rs. 2000 however he received Rs. 2400, 2500, 2500 on different dates. The former acts were termed as Gross misconduct and the latter act was termed as Minor misconduct as per relevant paras of Desai Award and Sastry Award. The workman was also supplied with the list of the customers together with the details of amount they rendered to him on different dates. The workman replied the charge sheet vide Ex. 17 on 9-2-89 stating that he had borrowed a housing loan from the Bank, but the amount was not adequate and hence he had borrowed also from private money lenders which resulted in huge debt; that he could not pay timely instalments to the money lenders who pressurised him; that on account of financial constraints he was suffering from depression and other psychosomatic illness, that in such circumstances he committed certain lapses which he could not think of during his entire service of 18 years and he assured that he will not commit such lapses in future and tendered apology. The Bank decided to hold a departmental enquiry vide Ex. 18 on 22-7-89. Vide Ex. 19 the Enquiry Officer sent intimation to the workman to remain present in the enquiry. Ex. 20 is the statement of the workman recorded in the enquiry wherein the workman stated to have understood the charges, he shown unwillingness to be defended by a union representative, also stated that he was physically and mentally comfortable. He admitted the first charge and also stated that he did not want to verify the original documents. He also admitted the charge of negligence. The workman was read out the charge-sheet and supporting allegations upon which the workman admitted the same and corrected that instead of ten it should be eleven customers and accepted unconditionally all the charges and also produced writing dated 16-8-89 vide Ex. 21 and 22. The Enquiry Officer vide Ex. 23 submitted his findings on 13-8-89 holding the workman guilty of the charges levelled against him. The disciplinary authority and the Regional Manager of the Bank issued show cause notice to the workman on 23-12-90 vide Ex. 24 calling upon him to show cause on or before 20-12-90. Vide Ex. 25, the Bank extended time up to 31-12-90. Vide Ex. 26 dated 31-12-90, the workman stated that he was suffering from jaundice and, was unable to attend to the disciplinary authority. Vide Ex. 27, the disciplinary authority stated that if the workman was not in a position to avail opportunity of personal hearing he may send his written submission/representation by 13-1-91. Vide Ex. 29, the workman stated that it was highly essential to see the disciplinary authority in person and that written submission will not serve the purpose. Hence, the disciplinary authority extended the "time" upto 28-1-91 vide Ex. 30. Vide Ex. 31, the workman stated that he was still suffering from jaundice and bed rest advised to him by the doctor and that he will be able to attend after 20-2-91. The disciplinary authority vide Ex. 32

and Ex. 33 granted time respectively up to 6-2-91 and 21-2-91 and also sent a telegram to the workman. It appears that, that was the last communication to the workman before passing the order of discharge. The workman did not remain present to make personal representation even on the date as per his choice and hence the disciplinary authority after considering the circumstances of the case, passed the order of discharge from service of the Bank against the workman on 27-2-91 which is produced at Ex. 34.

7. It appears that the workman moved the Hon'ble High Court by way of Special Civil Application being Spl. CA No. 6347/91 (Ex. 38) and subsequently withdrew the same or the purpose of filing departmental appeal. The workman filed departmental appeal on 11-10-91 before the Dy. General Manager of the Bank vide Ex. 35 and the appellate authority confirmed the order of disciplinary authority vide Ex. 36 on 12-12-91.

8. Learned Shri Parmar for the workman submitted that the workman was appointed as a clerk-typist and was not duty bound to handle the cash. It is an admitted position that the workman was a clerk-typist as can be seen from the appointment order Annexure 'E'. But, in the defence statement the Bank stated that the workman had accepted the duty of Teller voluntarily and had also executed a bond for that purpose; that the workman was paid teller's allowance from time to time whenever he was entrusted with such work. It appears that the workman had not raised such an issue before the enquiry officer, that he was forced to do the job of teller. So far as the alleged financial constraints of the workman are concerned, which tempted him to commit misconduct in the weakest moment of his life, the workman was earning a salary of Rs. 4354-55 ps. as can be seen from the defence statement, at the time of his discharge in 1991. Such an amount by way of salary was not a small amount in those days. The workman being working in the banking institution, he was fully aware of the result of his deeds. Learned Shri Parmar also submitted that the workman had repaid the amount of Rs. 19,700 forthwith, and hence his case should be seen from different angle. It is true that the workman had repaid amount in two instalments prior to and after the issuance of the suspension order. The order of suspension is dated 5-12-88 (Ex. 15). The workman had misappropriated the funds during 8-10-88 to 17-11-88. Thus the workman was guilty of temporary misappropriation. But in view of this Tribunal, misappropriation or dishonesty of whatsoever nature cannot be condoned merely because the same was for a temporary period or the amount involved was small one. Learned Shri Parmar also submitted that the workman had a clean record of eighteen years of service. It may be true that the workman may not have committed such a misconduct in his past service. But even a solitary lapse of the present nature should be viewed seriously, in the view of this Tribunal. Learned Shri Parmar also submitted that since the workman had admitted his guilt frankly, leniency should be shown to him. This Tribunal does not think, it would be justified in interfering with the punishment especially when the misconduct is of gross nature.

9. While going through the documentary evidence regarding the enquiry, this Tribunal came across two circumstances of late action by the Bank for which no explanation is found anywhere in the enquiry and that is why, this Tribunal cannot resist itself from stating said circumstances. The first incident is that the workman was given charge sheet on 27-1-89 and (Ex. 16). The workman had replied the charge sheet on 9-2-89 admitting the charges at the same time apologising and requesting to take a lenient view (Ex. 17). Still however, the disciplinary authority takes a decision to hold enquiry only on 22-7-89, i.e. after more than five months allowed to lapse for taking the decisions to hold enquiry, even though the workman had categorically admitted the charges levelled against him. The decision to hold enquiry is at Ex. 18. The second incident appears to be more serious than the first stated above. After the enquiry in which the workman had admitted his charges, the Enquiry Officer submitted his findings on 23-8-89 (Ex. 23). The Bank nor the disciplinary officer took any action of serving a show cause notice to the workman up to 13-12-90. The time lapsed here was of one year, three months and about twenty days. What the Bank was doing all this period right from 23-8-89 to 13-12-90 is not explained anywhere. It cannot be said that these much period was spent in preparing the show cause notice. In any case, these are two circumstances which I had to point out in this award, but even those circumstances would not justify this Tribunal to interfere in the order of punishment because the misconduct charged and proved was of a serious nature. Learned Shri Oza submitted that in the case of minor misconduct, the Tribunal can interfere with the punishment out when the major or gross misconduct is committed, the Tribunal is not entitled to interfere in the punishment of discharge/dismissal or termination of service.

10. Learned Shri Parmar cited the decision (award) of learned Tribunal Shri R. S. Shukla, as he then was, rendered in Reference (IIC) No. 9/93. The workman in that case was also working as teller at the relevant time in the State Bank of India and had misappropriated an amount of Rs. 4050. The Tribunal had awarded reinstatement to the post of peon. Learned Shri Oza had attacked the said award by showing certain paragraphs of the award. I would say that the award or decision of equal authority cannot bind the other authority having the same jurisdiction. It may be used as guideline, but I think that the said award would not serve as a guide, because the learned Tribunal after dealing with the contention raised on behalf of the workman had come to conclusion that it cannot be accepted that the workman had admitted the charges (in that case) on assurance given by Shri Ambani, the Enquiry Officer; that the workman had misappropriated the amount of Rs. 4050 on five different occasion. The learned Tribunal also disagreed with the suggestion to degrade the workman from the post of clerk to the post of a peon, however in the operative part of his award, the learned Tribunal directed that said workman Shri Behari Purshottamlal Pandva should be appointed as peon in continuity with the previous service (which he rendered as a clerk).

11. Regarding the powers of the Labour Courts, Industrial Tribunal and National Tribunal, under Sec-

tion 11-A of the Industrial Disputes Act, the learned Shri Parmar submitted that as the employers were exploiting the workman by inflicting the last punishment, this the said Section was brought on the statute after a long battle with the legislature and hence the Tribunal is well empowered to interfere in the punishment inflicted upon a workman. Learned Shri Parmar has cited 1982 (45) FLR 150 Ashok Pandurang Taware V/s. S. D. Rane, Presiding Officer, I have gone through the said judgement. It was a case wherein the workman was charged for indiscipline, bad behaviour, habitual late coming and indifference to work etc. On facts, the said decision cannot apply to present case. So far as the powers under Section 11-A of the Industrial Disputes Act are concerned, the Hon'ble Supreme Court in Tripura Gramin Bank and others V/s. Tarit Baran Roy and another, 2001 1 LLJ 1330 observed that :

"In our opinion, those principles engrafted in Section 11A of the Industrial Disputes Act cannot be engrafted into the disciplinary proceedings either in relation to Government servant or other employee whose service conditions are governed by set of rules and not the provisions of Industrial Disputes Act"..... "That apart...."

Going through the decision at a glance it appears that a cashier in the Gramin Bank was chargesheeted and dismissed from service. The cashier filed a civil suit, after unsuccessful attempts at departmental appeal. The trial Judge found that enquiry vitiated on account of violation of principles of natural justice. He therefore, decreed the suit. The Bank had preferred an appeal which was allowed and it was held that Civil Court would not entitle to interfere with the findings of a domestic Tribunal. In second appeal the Hon. High Court reappraised the evidence and came to a different conclusion. It was the decision of the Hon. High Court which was challenged before Hon. Supreme Court and in which above observations were made. Learned Shri Oza cited 2001 11 LLJ 48 Prasad Film Laboratories, Madras V/s. Presiding Officer, Labour Court, Madras and another. In that case the workman had stolen the property (raw films) of very small quantum. The Labour Court had directed reinstatement. It was held in the said decision that the order of the Labour Court was arbitrary and cannot be allowed to stand because it amounts to abuse of discretionary jurisdiction conferred by Section 11-A.

12. In the case of State Bank of India V/s. Central Government Industrial Tribunal and another 1998(80) FLR 849 the Hon'ble Madhya Pradesh High Court (through Hon'ble Justice D. M. Dharmadhikari) stated the law on Section 11-A of the Industrial Disputes Act. The workman (N. K. Shukla) in that case was a cashier. A shortage of Rs. 9009 was detected and a domestic enquiry was held against him. A dispute was raised in respect of his dismissal and the learned Tribunal on the basis of the evidence held that only a case of negligence was made out and he therefore directed that the workman should be reduced to next lower rank instead of dismissal. In the aforesaid case, the Hon'ble High Court (of Madhya Pradesh) stated :

"Time and again from the case of Firestone Tyre and Rubber Co. on which strong reliance

is placed on behalf of the workman and subsequent case of The East India Hotels and Christian Medical College Hospital Employees Union, the Supreme Court has been reiterating the existence of limited scope for interference by Labour or Industrial Courts in the disciplinary action of the employers even after introduction of the provisions under Section 11-A of the I.D. Act which confer additional power on the courts in such matters. It is firmly settled in the decisions of the Supreme Courts (supra) that where a proper enquiry has been held by the employer and the finding of misconduct has support from the evidence adduced in the enquiry, the Tribunal has no jurisdiction to set in judgement over the decision of the employer as an appellate body. The Courts can interfere in the decision of the employer only on finding that the enquiry was unfair or the findings reached were perverse or without evidence. The Court can also interfere where the employer is guilty of victimisation, unfair labour practice or mala fide or where the punishment is harsh and oppressive "

There is no question enquiry being unfair or findings perverse. Victimisation, malafides unfair labour practice cannot be inferred from the facts stated earlier. The punishment also cannot be said to be harsh. Under the circumstances, it would not be possible to interfere with the punishment inflicted upon the workman. In fact, in view of the aforesaid decision of the Hon'ble M.P. High Court this Tribunal has no jurisdiction even to exercise the power under Section 11-A of the I.D. Act. Even otherwise, the misconduct being of a serious nature, this Tribunal does not think it proper to interfere in the quantum of punishment, or to alter the same in any manner. In 2000 (1) GLR 877 Victor F. Parmar V/s. Elecon Engineering Co. Ltd., the Hon'ble High Court stated that the powers under Section 11-A of the I.D. Act has to be exercised judiciously and the Tribunal or the Labour Court as the case may be can interfere with the decision of management under Section 11-A of the I.D. Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt established or alleged against the delinquent workman. In number of decisions, this Court has time and again held that misappropriation, dishonesty and theft, if held to be established or proved, would be the major punishment and normally, dismissal order passed by the competent disciplinary authority should not be interfered with by the Labour Court or the Industrial Tribunal under Section 11-A of the I.D. Act. In view of the aforesaid position of law, there appears to be no substance in this reference case and hence the same requires to be dismissed. I, therefore pass the following order :

ORDER

This reference is dismissed. There is no orders as to costs.

Ahmedabad,

Dated : 4-10-2001.

Y. P. BHATT, Industrial Tribunal

नई दिल्ली, 30 अक्टूबर, 2001

का.प्र. 3214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्दन ईस्टर्न रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[सं. एल-41012/15/2000—आई प्रार (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3214.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of North Eastern Railway and their workman, which was received by the Central Government on 29-10-2001.

[No. L-41012/15/2000-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, LUCKNOW

Presiding Officer : Rudresh Kumar.

ADJUDICATION

I.D. No. 38/2000

Ref. No. L-41012/15/2000-IR(B-I) dt. 30-5-2000

BETWEEN

The Zonal Secretary,
All India Scheduled Castes and Scheduled Tribes
Rly Employees Association
(N R Rly. Zone) E-41/B, Aishbagh, Rly. Colony
N. R. Rly. Policlinic
Lucknow (U.P.) (espousing cause of Ram Das).

AND

The Divisional Railway Manager(P)
North Eastern Railway,
DRM Office, Ashok Marg
Lucknow (U.P.)

AWARD

By Order No. L-41012/15/2000/IR(B-I) dated 30-5-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 I.D. Act, 1947 (14 of 1947), referred this industrial dispute between The Zonal Secretary, All India Scheduled Castes and Scheduled Tribes Employees Association N. R. Railway, Lucknow (espousing cause of Ram Das) and The Divisional Railway Manager(P), North Eastern Railway, Lucknow for adjudication.

The reference is produced as under :

"Whether the action of the North Eastern Railway in not promoting Ram Das Wallman to the post of (Awar Lipik) by Divisional Railway Manager, North Eastern Railway, Lucknow is legal and justified? If not what relief the workman is entitled?"

2. In brief, Ram Das, Wallman, has raised this industrial dispute through its sponsoring union All India Scheduled Castes and Schedule Tribes Rly. Employees Association (N. R. Zone) E-41/B Aishbagh Rly. Colony, Lucknow claiming promotion to the post of Lower Division Clerk in group 'C'. He was working as wallman in group 'D' post. His grievance is that by letter dated DRM/P/LKO Junc/E-II/1283/Misc./Engg. dated 26-11-1991 a notification was issued to fill up the post of office clerks in the grade of Rs. 950-1500 in class 'C' against 33% Scheduled Castes and Scheduled Tribes quota. At that time he was working in the office of Inspector of Works(IOW). This notification was received in the said office on 30-11-1991 but date of examination was not communicated to him with a view to prevent him to appear in test, to be held on 8-12-1991. In absence of knowledge that test is scheduled for 8-12-1991, he proceeded on earned leave from 3-12-1991 to 9-12-1991 and thus could not appear in the test. This serious lapses on the part of the Inspector of Works(IOW), in not communicating him about proposed test scheduled for 8-12-1991, he was deprived of opportunity to sit in the test though he was fully qualified. It is further pleaded that it was open to management to arrange a supplementary test to consider him as provided in rules, but despite repeated requests no supplementary test was arranged by the management and so he was unjustly denied opportunity to be selected in class 'C' post of lower Division Clerk against Scheduled Castes quota. He further asserted that some persons who failed to the test were considered by interview but the workman was denied this opportunity also.

3. The management has denied allegations made by the workman. It has asserted that the workman was fully aware with the date of test proposed on 8-12-1991. This information was displayed on the office board. Furthermore, a notice was sent at residential address of the workman and was serviced on his wife who assured to inform the workman. The workman had knowledge of the proposed date of test and deliberately avoided to appear. Initially, he applied for Earned Leave for 3-12-1991 and 4-12-1991 which was sanctioned to him. He was expected in office on 5-12-1991, but unauthorisedly, absented himself and joined the office only on 9-12-1991. Later, he submitted another leave application to sanction leave from 3-12-1991 to 9-12-1991. The workman failed to avail opportunity due to his unauthorized absence and also not giving proper and correct address during the leave. There was no ill motive to deny him opportunity.

4. The main controversy, thus, is, whether the management deliberately did not inform date of test to the workman denying him opportunity to appear in the test, for further promotion group 'C' or the workman on being Earned Leave failed to appear in the test held on 8-12-1991.

5. Both the parties relied on documentary and oral evidence. The workman examined himself and also submitted copy of representations made from time and again seeking supplementary test on plea that his non-appearance in the test on 8-12-1991 was caused due to failure of Inspector of Works (IOW) in not apprising date of examination.

6. The management, on the other hand, maintained that the workman had full knowledge of the date of test and deliberately avoided it. There was no lapse in communicating, date of test to the workman and lapse, if any, was attributable to the workman alone. In support of its plea, the management filed copies of two leave applications filed by the workman, notice sent to him on residential address and also intimation to the authorities that the workman is one of the employee to appear in the test. It was also pleaded by the management that the test held on 8-12-1991 was open test for which supplementary test is not permissible. Only, in case of departmental promotion test, a supplementary test is permissible contingent on certain conditions.

7. As the factual scenario emerges, there is no dispute that the workman was eligible to appear in the proposed test, that intimation to hold test was received in the office of Inspector of Works (IOW) on 30-11-1991, two days before the workman proceeded on earned leave with a view to appear in court case at Gorakhpur and later, on return from leave he filed another application seeking earned leave w.e.f. 3-12-1991 to 9-12-1991, which was allowed on 16-12-1991, and also that he filed an application earlier to it seeking leave for 3-12-1991 and 4-12-1991. Though it was submitted that application for earned leave for 3-12-1991 and 4-12-1991 was not filed by him, but in absence of denial of signature on this application and also reliable oral evidence on the said point, it has to be accepted that the workman sought leave for 3-12-1991 and 4-12-1991 only at the first instance and filed the second application on return from leave i.e. after 9-12-1991. In both these applications, the workman did not give address of Gorakhpur though required by rules, so as to enable the management to send information at some emergency. There is no evidence that the management had any motive to prevent the workman in appearing in the test. The letter dated 7-12-1991 sent to the department, included name of the workman as one of the employee to undertake test. This indicates that the management was not vindictive against the workman. A letter was sent to him on his local residential address by special messenger, and the endorsement over the letter gives inference that his family members assured to inform the workman about the forthcoming test. Had the workman not extended his leave, he could have got opportunity to appear in the test. Even on accepting the fact that the letter intimating date of test was received in office of Inspector of Works (IOW) on 30-11-1991, the workman is not entitled to relief. Normally two or three days are taken in intimating the concerned employees in such cases. It was not known that the workman would not return from leave on 5-12-1991. In sum total, non availing of opportunity to appear in the test on 8-12-1991 was due to lapse of the workman.

8. Coming to the claim of supplementary test, the Senior Divisional Personal Officer (Per.) in his testimony clarified the rules that in case of open examination like held on 8-12-1991, supplementary test is not permissible. This statement is to be accepted and in this court also, the workman not wronged.

9. Thus, there is no evidence to fix accountability on the management to deny opportunity to the workman. The workman suffered due to his own lapses and he is not entitled any relief. The fact that some employee who failed in the examination was called for interview would also not benefit the workman whose case has to be judged on the basis of merit of his own case.

10. Accordingly, the award is against the workman. He is not entitled to any relief.

RUDRESH KUMAR, Presiding Officer.

नई दिल्ली, 30 अक्टूबर 2001

का.आ. 3215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नादरन ईस्टर्न रेलवे के प्रबंधन के संबंध में निदेशित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[सं. एल-41012/237/2000-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th October, 2001

S.O. 3215.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of North Eastern Railway and their workman, which was received by the Central Government on 29-10-2001.

[No. L-41012/237/2000-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, LUCKNOW

Presiding Officer, Rudresh Kumar.
ADIUDICATION

I.D. No. 35/2001

Ref. No. L-41012/237/2000/IR (B-I)
Dated : 14-2-2001

BETWEEN

Member Executive
P.R.S.S.
North Eastern Railway
283/63, KA/22
Premwati Nagar

Manak Nagar
Lucknow-226001
(In the matter of Sukh Deo Singh)

AND

Coaching Depot Officer
North Eastern Railway
Lucknow Jn. Charbagh
Lucknow (U.P.)-226001.

AWARD

By order, No. L-41012/237(2000)IR (B-I) dated 14-2-2001, the Central Government in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made over this industrial dispute between the Member Executive, P.R.S.S., N.R. Railway, Lucknow espousing cause of Sukh Deo Singh and the Coaching Depot Officer, N.E. Railway, Lucknow for adjudication.

The reference is produced as under :

"Whether the action of the management of North Eastern Railway, Lucknow in not allowing duty to workman Shri Sukh Deo Singh w.e.f. 4-3-2000 though workman is attending work place and office daily regularly, is legal and justified? If not, what relief the workman is entitled to?"

2. Both the workman and the employers were issued registered notices on 12-3-2001, but none of the parties appeared. Fresh notices were sent to them on 9/10 4-2001, 2-5-2001, 21-5-2001 and 2-7-2001. Both the parties failed to respond the notices.

3. As both the parties are absent, the adjudication cannot proceed on merit. As such, the reference is adjudicated as 'no claim award'.

Lucknow,
16-10-2001.

नई दिल्ली, 5 नवम्बर, 2001

का.आ.3216—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार स्टेट बैंक इंदौर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[सं. एन-12012/18/92 आई आर बी-III/(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O.3216. -In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal cum Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Indore and their workman, which was received by the Central Government on 2-11-2001.

[No. L-12012/18/92-IRB-III/(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, JABALPUR

CASE NO. CGIT/LC/R/87/92

PRESIDING OFFICER : SHRI K. M. RAI
Shri Bhagchand Sawani,
Ex Clerk, State Bank of Indore,
358 Sadhu Vaswani Nagar,
Indore Applicant

Versus,

Asstt. General Manager,
State Bank of Indore,
Zonal Office,
103, Kanchanbagh, Indore Non-applicant

AWARD

(Passed on this 18th day of October-2001)

1. The Government of India, Ministry of Labour vide order No. L-12012/18/92-IRB.III dated 30-4-92 has referred the following dispute for adjudication by this tribunal.

"Whether the action of the management of State Bank of Indore in dismissing Shri Bhagchand Sawani from the services of State Bank of Indore (Cloth Merchant Branch) w.e.f. 28-11-90 is legal and justified? If not, what relief the workman is entitled to?"

2. The case for the workman is that he was appointed as clerk in the State Bank of Indore in Oct.1969. He continuously worked for 21 years with an excellent record. On 1-7-88, he was given a chargesheet by the management alleging therein that he had taken two bills from the despatch for sending him to State Bank of Indore Tirupati and State Bank of Indore Ahmedabad. The management wrongly alleged that these bills were not sent by the workman to the respective banks. In this way, the Bank alleged that the workman had committed misconduct under 19.5J. He has denied all the charges by the reply dated 16-7-88.

3. The workman further alleges that M/s Sharda and Co. had an account with the State Bank of Indore. They had an overdraft limit of Rs. 40,000/- and bill limit of Rs. 2 lakhs. The overdraft limit was clean and the bill limit was on submission of documents. When any party submits bills and the Bank purchases it then it is sent to the collecting Bank for releasing money. In this process, it takes months for the collecting Bank to send amount to the purchasing bank. The only consequence is that the party who submits the bill is required to pay interest till realisation and no other consequences follows. In the present case, two bills were purchased by the State Bank of Indore from M/s Sharda and Co. for

Rs. 40,000 and Rs. 25,000 respectively. With a view to get quick realisation of money, M/s Sharda and Co. wanted to send the Bank advice by hand so that the collection could be held early and their bill limit of Rs. 2 lakhs will be again available to them for further transaction. For this purpose, with the permission of the Manager, the envelopes of the bills were collected from the despatcher and sent to the respective banks through representative of M/s Sharda and Co. Both these bills were received by the State Bank of India Tirupati branch and State Bank of Indore Ahmedabad branch. When the amounts were not received by the State Bank of Indore then the telegraphic and written reminders were sent to the said banks on 10-7-85, 16-7-85 and 2-8-85. The said banks never replied to the State Bank of Indore. Thereafter the party was informed orally about the non-receipt of the reply and therefore the party deposited Rs. 50,000 and Rs. 20,000 on 29-8-85 and 16-10-85 with interest positively. In this way the Bank was never put to any loss in respect to profit and interest.

4. On the facts and circumstances of the case, there was neither any misconduct nor any justification for issue of chargesheet against him. The DE conducted by the management was an empty formality. He was not given adequate opportunity to defend his case properly. He was not allowed to engage any defence Assistant to defence his case before the Enquiry Officer. No opportunity was given to him by the Enquiry Officer to prove his defence. The management failed to produce the important witnesses to prove the real facts of the case. The State Bank of India Tirupati branch and the State Bank of Indore Ahmedabad branch never replied specifically that they have not received the bills submitted by M/s Sharda and Co. in the State Bank of Indore. M/s Sharda and Co. had a fixed deposit of Rs. 2,70,000 with the Bank at the relevant time. The said company had also furnished security of Rs. 12 lakhs to the State Bank of Indore in respect to its business transactions. In this way there was no question of improper action as alleged by the management. The Enquiry Officer had wrongly held the charges proved against him. The report of the Enquiry Officer is perverse. The Disciplinary Authority illegally accepted the report of Enquiry Officer and imposed the punishment of dismissal from service on him vide order dated 28-11-90. The order of dismissal from service deserves to be quashed. The workman is entitled to reinstatement with back wages.

5. The case for the management is that M/s Sharda and Co. is a proprietary concern. Wife of the workman is the sole proprietor of this concern. The State Bank of Indore purchased two bills from M/s Sharda and Co. own by the workman's wife. The

value of these bills was Rs. 20,000 and 25,000 respectively. The workman gave a letter to the despatch department of the Branch requesting for delivery of the bills for forwarding the same to the concerned banks for collection. The bills were not returned for a long time and therefore the Enquiry from State Bank of India, Tirupati and State Bank of Indore, Ahmedabad was made by the management. Both the banks advised that the said bills were not received by them. The amount under the bills was deposited by M/s Sharda and company and till then the amount to be withdrawn by bearer cheque by the workman was utilised. The amount of the bill was deposited after a lapse of few months and therefore the workman was chargesheeted because of this act and omission on his behalf. The chargesheet was served on him and the DE was conducted in accordance with the rules. The workman was given ample opportunity to defend his case properly. He participated in the enquiry and submitted his defence before the Enquiry Officer. The Enquiry Officer had committed the enquiry in a just and fair manner. No prejudice has been caused to the workman. The workman deliberately did not tender the bills to the concerned banks for collection with an ulterior motive. All the relevant documents were filed and the witnesses were produced during the Enquiry proceedings. The DE was conducted in a just and proper manner. The Enquiry Officer submitted his report after considering the material available on record. The report submitted by him is just and proper.

6. The management further alleges that the Disciplinary Authority accepted the report of the Enquiry Officer and the workman were dismissed from service. The order passed by the management is perfectly just and proper. The workman preferred an appeal before the Appellate Authority who also dismissed the same holding the same as without substance. The imposition of punishment of dismissal from service is appropriate in the circumstances of the case and therefore it does not require any interference. The workman is not entitled to reinstatement with back wages.

7. The following issues arise for decision in his case and my findings thereon are noted hereinafter:

1. Whether the DE conducted against the workman is just and proper?

2. Whether the management is required to lead evidence to prove the alleged misconduct of the workman?

3. Whether the imposition of punishment of dismissal from service is just and proper?

4. Whether the workman is entitled to reinstatement with back wages?

5. Relief and costs?

8. Issues Nos 1&2 :

It has been held by this tribunal on 21-7-99 that the DE conducted against the workman is just and proper. In view of this finding it is held that the management is not required to lead any further evidence to prove the alleged misconduct of the workman. Both these issues are answered accordingly.

9. Issue No 3 :

The workman was chargesheeted by the Bank for not sending 2 bills for collection of money from State Bank of India Tirupati and State Bank of Indore, Ahmedabad. For some months, these two bills purchased by the State Bank of Indore, were not cleared and no communication was received from the said two banks in respect to the collection of the amount mentioned in the bills. On enquiry from State Bank of Indore, the said 2 banks sent a reply that the bills do not appeared to have been received by them. There is no specific denial from the said 2 banks that the concerned 2 bills were not received by them. It is just possible that due to postal mistake, the bills could not be received by the State Bank of India, Tirupati and State Bank of Indore, Ahmedabad. The reply of the said 2 banks are Ex M-12 and M-13. In view of his reply, it is not possible to hold that they had not received the bills purchased by the State Bank of Indore from M/s Sharda and Co. There is also no evidence to show that the workman had not sent these two bills to the concerned banks and had deliberately withheld the same with ulterior motive. The amount of the bill with interest was immediately deposited by M/s Sharda and Co. to the State Bank of Indore the day it was demanded. This very fact goes to show that no loss has been caused to the Bank in any manner. Moreover the bills were handed over to the workman with the permission of the Branch Manager for sending the same through some courier for early collection of the amount. For this act, no motive can be attached. It was done only with an intend to save the increasing interest to be realised by the Bank. In view of all these facts, it becomes amply clear that the management has imposed the disproportionate punishment by dismissing the workman from service w.e.f. 28-11-90. No ulterior motive could be attached to the conduct of the workman on the material available on record. Hence, the order of dismissal deserves to be quashed. Issue No. 3 is answered accordingly.

10. Issue No. 4 :

On the reasons stated above, it is held that the management had illegally imposed the punishment of dismissal from service on the workman w.e.f. 28.11.90. It is therefore, quashed. The workman is entitled to reinstatement as far as the back wages are concerned, on the principle of no

work re pay. he is not entitled to back wages. This issue is answered accordingly.

11. Issue No. 5:

On the reasons stated above, it is held that the workman is entitled to reinstatement with back wages. His absence from duty shall be treated as continuous service for pensionary benefits only. He shall be deemed to be in service during the said period. The reference is accordingly answered in favour of the workman and against the management.

12. Copy of the award be send to the Ministry of Labour, Government of India as per rules.

K.M. RAI, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2001

का.आ. 3217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करूर वैया बैंक के प्रबंध तंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अग्रिकरण एवं श्रम मन्त्रालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था ।

[सं. एल-12012/137/95-आई आर (वी-आई)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O.3217.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karur Vysya Bank and their workman, which was received by the Central Government on 2-11-2001.

[No. L-12012/137/95-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 14th September, 2001

Present : K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 402/2001?

(Tamil Nadu State Industrial Tribunal I.D. No. 64/96)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S. Kannan and the Management of Karur Vysya Bank, Chennai).

BETWEEN

The General Secretary, : I Party/Claimant
Karur Vysya Bank Employees
Union, Bangalore.

AND

The General Manager, : II Party/Management
Karur Vysya Bank,
Karur.

Appearance:

For the Claimant : M/s. D. Hariparanthaman,
and V. Ajoy Khose,
Advocates

For the Management : M/s. T.S. Gopalan & Co.,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12012/137/95-IR(B-I) dated 13-8-96.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 64/96. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 402/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 22-02-2001. On receipt of notice from this Tribunal, the counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 13-08-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the documentary evidence let in on the side of the Management, upon hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following:—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows:—

“Whether the action of the Management of Karur Vysya Bank Ltd. in terminating the services of Shri S. Kannan w.e.f. 29-07-1991 is justified? If not, to what relief he is entitled?”

2. The averments in the Claim Statement of the I Party/Claimant are briefly as follows:—

The General Secretary, Karur Vysya Bank Employees Union as I Party/Claimant has raised this industrial dispute espousing the cause of Sri S. Kannan, workman/employee of II Party/Karur Vysya Bank. The I Party/Claimant (herein after referred to as Petitioner) has stated in the Claim Statement that as per the condition of Reserve Bank of India, the II Party/Management Karur Vysya Bank (hereinafter referred to as Respondent) has advanced 40% of loan to the priority sector, which includes agricultural and small scale industries announced by the Govt. IRDP is one of such schemes. While providing loan under these schemes, the Respondent instead of paying the entire amount to insist for making fixed deposits from the borrowers to ensure their repayment which is against and violative of the scheme. IRDP loans are recommended by the Block Development Officers of the Government. The Branch Manager would scrutinise the loan papers of the borrowers forwarded by the Block Development Officers to the branch. The Central Office on receipt of scrutinised loan papers in respect of the capacity of the Borrowers by the Branch Manager to either sanction or reject the loans. While sanctioning the loan, the Central Office would direct the Branch Manager to collect fixed deposit from the loan amount advanced to the borrower as a pre-condition. The loan is sanctioned only when the borrower makes fixed deposit from the loan account and only if the subsidy amount is received from the Government. The fixed deposit will be created in the name of the borrower by diverting the amount from the loan amount. 90% of the agricultural loans are financed by NABARD which collects only 6.5% interest on the advanced loan to the bank. But the Respondent collects more than 10% as interest from the borrowers. 1/3rd amount of the IRDP loan is subsidised and is borne by NABARD/Government. 2/3rd amount of loan is payable by the borrowers. That 2/3rd amount will be compulsorily taken as deposits from the borrowers. The concerned workman Sri S. Kannan was working in Thottiam branch during March, 1987 the Block Development Officer forwarded certain names for loans under IRDP scheme to that Thottiam branch. The loans were accounted on 31-3-87 due to the yearly accounts closure and was kept in suspense account. As soon as the subsidy was received the loans were disbursed on 27-4-1987 and 28-4-1987 to the parties. The payment will be made directly to the parties, if it is instalment loan such as loan granted for petty shops, grocery, carpentry works etc. As far as other loans are concerned, the payment will be made to the suppliers, since under those loans the borrowers have to create

assets. The concerned workman Sri S. Kannan paid the loan amounts on 27-4-87 and 28-4-87 as directed by the Branch Manager after deducting 2/3rd portion towards fixed deposit, general insurance stamp paper expenses and miscellaneous expenses as identified by the Branch Manager and the same were recorded in the scroll and also in accounts. The concerned workman was issued a memo dated 19-6-87 suspending him from service. Later a charge sheet dated 13-7-87 was issued to him. The Divisional Manager asked the Petitioner to give a statement for the preliminary investigation conducted by him. Since the concerned workman received the charge sheet in the meantime, the Petitioner did not reply to the letter of the Divisional Manager dated 17-6-87. Even before the completion of the preliminary investigation, the charge sheet was issued to the concerned workman with a pre-determined mind. In the charge sheet, ten acts of misconduct and the concerned workman have been alleged. The Petitioner submitted his explanation dated 22-7-87 denying the charges. Not satisfied with his explanation, the Management ordered for enquiry. There is no basis for issuing the charge sheet. The domestic enquiry conducted against the concerned workman was against the principles of natural justice, Bipartite Settlement and established rules of procedure of enquiry. In spite of the request by the defence representative, the loan documents and the preliminary investigation report were not produced in the enquiry. The Enquiry Officer ought to have directed the Management to produce the relevant documents. The Divisional Manager, who investigated the incident deposed in the enquiry as MWI based on his investigation. But his investigation report was not produced by the Management. When it is an offence under IPC as alleged, the Management is not justified in proceeding with the departmental enquiry. The Management had not examined in the enquiry those parties who have received the loan amount. When there is a charge of collusion, the Management should have conducted a joint enquiry. The Enquiry Officer allowed the Management to rely on the documents which were not marked through proper witnesses and thereby a opportunity to cross examine those witness with regard to those documents has been denied. The Enquiry Officer cum Disciplinary Authority gave his findings dated 10-4-91 holding all the charges were proved and also proposing a punishment of dismissal without notice. During the personal hearing also, the Petitioner submitted written submissions. Final orders dated 21-7-91 was passed confirming the findings and the proposed punishment of dismissal without notice, which is illegal unjust and arbitrary. There is no evidence to show that whether the concerned workman derived any benefit or any consideration to say that he has committed fraud

and misappropriated the loan amount. The Branch Manager was not preceded with any action. The Enquiry Officer committed error in brushing aside the truth. He failed to follow in the domestic enquiry the substantive rules of evidence. There is not even circumstantial evidence available in this case to prove the charges. There is no conclusive or legal evidence to prove the charges, no prejudice is caused to the bank either by monetary loss or other loss. The concerned workman has accounted the credit vouchers for having received miscellaneous charges, general insurance premium and stamp charges. It is with the bank account. The appeal of the concerned workman was dismissed without answering his contentions. Hence this Hon'ble Tribunal may pass an award holding that the action of the management is unjustified and direct the Management to reinstate him in service with continuity of service, back wages and other attendant benefits.

3. The averments in the Counter Statement of the II Party/Management are briefly as follows:

The II Party/Management Karur Vysya Bank Ltd. (hereinafter referred to as Respondent) admits that the concerned workman was working as Clerk-cum Cashier in Thottiam Branch in South Arcot District, which is a rural branch with one Manager, one officer, two clerks and one sub-staff. He was dismissed from service on certain charges of misconduct proved against him and an enquiry was held for that purpose. The charges levelled against the concerned workman were with regard to his complexity in the matter of sanction of irregular loans under the IRDP Scheme. As a cashier, the concerned workman is required to ensure that all the debit vouchers for cash payment are properly received by the recipients of cash over a revenue stamp wherever necessary. He is required to handle only cash transactions namely receipts and payments by cash and each transaction should be supported by a valid voucher. Only on the basis of duly completed remittance voucher relating to cash transactions, he can make entries in the cashier's scroll. Every entry of remittance for payment in the scroll should be supported by a valid cash voucher evidencing remittance/payment. Any deviation in this regard, indulged in by the Cashier resulting in such payment will be considered as not merely an irregularity but will lead to an inference that he was a party to the fraudulent transaction which had arisen thereon. On 19-5-87 when the Divisional Manager of the Respondent/Bank at Madras visited the Thottiam Branch, he noticed that out of 33 IRDP Loans sanctioned by the Central Office on 31-3-1987 and disbursed to the parties on 27-4-1987 and 28-4-1987 18 loans were closed even by 9-5-87 and this prompted him to probe further. It was found that the loans were sanctioned without

creation of any asset and the loans were all raised solely with a view to claim subsidy. The loans to the 33 parties were sanctioned and disbursed by the Branch Manager of Thottiam branch with the active connivance of the Cashier making it evident that Branch Manager and the Cashier had derived benefit out of the amount for subsidy along with the parties concerned. The modus operandi adopted by the branch in the sanction of most of the irregular IRDP loans was that out of the loan amount sanctioned after deducting the subsidy amount a fixed deposit would be created for the balance amount so that amount will be available for repayment of the loan and the subsidy amount will be appropriated by the applicant and the employees of the bank who had enabled the applicants to draw the subsidy. The loans were sanctioned without any asset being created. That would show a subsidy was fraudulently drawn and such a drawal would not have been possible but for the connivance and support of the Branch Manager and the Cashier. As Cashier the concerned workman was involved in the matter of fraudulent disbursement of IRDP loans to 33 parties as he had signed the cash debit vouchers evidencing pay roll without the signature of the recipients. In respect of 25 transactions where fixed deposits were created there was no real remittance of cash but the Cashier has chosen to initial the vouchers as having received the remittance. He has correspondingly made wrongful entries in the scroll both with regard to remittances and payments. Thus, the Cashier colluded with the Branch Manager and the concerned applicants in the matter of wrongful disbursement of subsidy which he would not have indulged in but for the fact that he was also a beneficiary in those transactions. Contrary to the established practice and the laid down conditions, the payments were made by cash through cash suspense account debit vouchers. In none of the 16 vouchers the signature of the applicants or the suppliers was obtained. In respect of vouchers covered by serial numbers 13, 16, the narration is that the amount was paid to the borrower which is also contrary to the IRDP Scheme. The vouchers under serial numbers 1 to 5, 7 and 9 show that payments were made to suppliers. The irregularities came to light during the course of inspection on 19-5-87. Thereafter, the concerned workman instigated a sub-staff Mr. Prabaharan to obtain the signature of the concerned party in the cash debit vouchers. The signature of the borrowers in respect of vouchers in serial numbers 8, 10 and 11 were obtained after the inspection. In the vouchers covered for the disbursement of 17 IRDP loans on 28-4-87, no signature from the recipients had been taken. The signatures of the borrowers in respect of the loans under serial numbers 12, 13 and 16 were obtained at a later date. In other vouchers signatures of the suppliers had not been obtained. On 3-6-87

the concerned workman instigated the sub-staff Mr. Prabaharan to obtain signature of 6 borrowers. For these misconducts, the charge sheet dated 13-7-87 was issued to the concerned workman. He submitted his explanation denying the charges. The concerned workman was furnished with list of documents and the list of witnesses relied on in support of the charges. On the request made by the concerned workman for production of six documents, the Presenting Officer agreed to produce two documents and objected to the production of other documents. After hearing the concerned workman and the Presenting Officer, the Enquiry Officer recorded consensus arrived at with regard to production of documents. After examining two witnesses for the Management and six witnesses including the concerned workman, the delinquent, the Enquiry Officer gave his report on 10-4-1991 holding that the charges against the concerned workman were duly made out. The copy of the findings of the Enquiry Officer and the proposed punishment of dismissal were communicated to the concerned workman calling upon him to appear for personal hearing. After considering the representation of the concerned workman in the personal hearing, orders were passed on 29-7-91 dismissing the concerned workman from service. The appeal preferred by the concerned workman was dismissed on 28-11-1991. It is valid and justified. The enquiry was fair and proper. If for any reasons, this Tribunal comes to the conclusion that the enquiry is vitiated, the Respondent may be given an opportunity to lead evidence on merits on the charges against the concerned workman. The conduct of the concerned workman has shaken the confidence the Respondent had in him. Therefore, the concerned workman would not be given any relief, much less the relief of reinstatement. Hence, the claim of the Petitioner may be rejected.

4. The point for my consideration is :

"Whether the action of the Management of Karur Vysya Bank Ltd. in terminating the services of Shri S. Kannan w.e.f. 29-7-1991 is justified. If not, to what relief he is entitled?"

Point:—

This dispute relates to termination of employment of one Shri S. Kannan who was working as a Clerk-cum-Cashier in Thottiam Branch of the Respondent/Bank. He was dismissed from service by the Respondent/Management w.e.f. 29-7-1991 on certain charges of misconduct alleged to have been proved against him in an enquiry held for that purpose. The charges levelled against him were with regard to his complicity in the matter of sanction of irregular loans under the IRDP scheme. It is alleged in the Counter Statement of the Respondent that it is maintaining the book of instructions, which is a manual setting out the manner in which the various

categories of employees should discharge their functions. As far as the Cashier is concerned, he is required to ensure that all debit vouchers for cash payments are properly received by the recipients of cash over the Revenue stamp wherever necessary. The cashier is required to handle only cash transactions mainly receipts and payments by cash and each transaction should be supported by a valid voucher. It is only on the basis of discharged voucher/duly completed remittance vouchers relating to cash transactions, he can make entries in the cashier's scroll. Every entry of remittance or payment in the scroll should be supported by a valid cash voucher evidencing remittance/payment. Any deviation in this regard indulged in by the cashiers resulting in such payment will be considered as not merely an irregularity but will lead to an inference that he was a party to the fraudulent transaction which had arisen thereon. This contention of the Respondent in their Counter Statement with regard to the Cashier of the bank, should discharge his function is not denied or disputed by the Petitioner Union.

5. It is further alleged in the Counter Statement of the Respondent that on 19-5-1987 when the Divisional Manager of the Respondent/Bank at Madras visited the Thottiam Branch, he noticed that out of 33 IRDP loans sanctioned by the Central Office on 31-3-87 and disbursed to the parties on 27-4-1987 and 28-4-1987, 18 loans were closed even by 9-5-1987 and this prompted him to probe further. It was found that the loans were sanctioned without creation of any asset and the loans were all raised solely with a view to claim subsidy. The loans to the 33 parties were sanctioned and disbursed by the Branch Manager of the Thottiam Branch with the active connivance of the cashier making it evident that the Branch Manager and the Cashier had derived benefit out of the amount of subsidy along with the parties concerned. It is further alleged that as the Cashier the concerned workman was involved in the matter of fraudulent disbursement of IRDP loans to 33 parties, as he had signed the cash debit vouchers evidencing payment without the signature of the recipients. In respect of 25 transactions where fixed deposits were created there was no real remittance of cash but the Cashier has chosen to initial the vouchers as having received the remittance. He has correspondingly made wrongful entries in the scroll both with regard to remittances and payments. Thus, the Cashier colluded with the Branch Manager and the concerned applicants in the matter of wrongful disbursement of subsidy which he would not have indulged in but for the fact that he was also a beneficiary in those transactions. These irregularities were found out by the Divisional Manager of the Respondent/Bank at Madras during the course of his inspection of Thottiam

branch on 19-5-87. The fact of inspection conducted by the said official of the Respondent/Bank has not been disputed by the Petitioner Union or the concerned workman. Hence the charge sheet was issued to the concerned workman charging with the misconduct of commission of offences as defined in the Bipartite Settlement involving moral turpitude and punishable under the Indian Penal Code, doing acts prejudicial to the interest of the bank, abatement or instigation of the acts above mentioned. The xerox copy of the said charge-sheet issued to the concerned workman dated 13-7-87 is Ex. M3. Prior to that, the concerned workman was issued an order of suspension dated 19-6-87 by the Respondent/Management. The xerox copy of the same is Ex. M2. Book of Instructions Part III Miscellaneous Services, pages 55 to 60 and 99 to 105 has been filed as xerox copies by the Respondent/Management and it is marked as Ex. M1. For the said charge-sheet, the concerned workman has given his reply dated 22-7-87. The xerox copy of the same is Ex. M4. In that reply, the concerned workman Sri S. Kannan has denied the charges mentioned in the charge memo Ex. M3. As the explanation submitted by the concerned workman is not satisfactory and convincing, the Management had decided to hold the departmental enquiry against the concerned workman on the charges levelled against him under Ex. M3 for which an intimation about the enquiry dated 5-8-87 was issued to the concerned workman as a notice by the Respondent/Management and the xerox copy of the same is Ex. M5. Subsequently, as there was a change of Enquiry Officers, notices dated 11-9-87, 26-11-87 and 27-11-87 were issued to the concerned workman and the xerox copy of the same are Ex. M6 and M7. Then the domestic enquiry was conducted. All the documents pertaining to the transactions done by the concerned workman as Cashier of the Respondent/Bank of Thottiam Branch were marked as exhibits on the side of the Management in the domestic enquiry as Ex. M3 to M47. The xerox copies of the same have been marked here as Exhibits by consent of both the parties as Ex. M40 to M53. On the side of the delinquent employee, the concerned workman Sri S. Kannan 93 documents have been marked as Ex. D1 to D93 in the domestic enquiry which have been marked by consent here as Ex. M54 to M145. On the side of the Management, then Divisional Manager, Madras and the then sub-staff of Thottiam branch of the Respondent/Bank were examined as Management witnesses. On the side of the delinquent employee Sri S. Kannan, apart from himself, five witnesses were examined as defence witnesses. After considering entire oral and documentary evidence the Enquiry Officer has given his findings dated 13-7-87 holding that the charge-sheeted employee is guilty of all the charges levelled against him in the charge-sheet and all the allegations have been

held as proved. The xerox copy of the Enquiry Officer's findings is Ex. M146. He has also suggested the proposed punishment to be imposed on the concerned employee since he happens to be the Disciplinary Authority also. The said findings of the Enquiry Officer-cum-Disciplinary Authority was furnished to the concerned employee and a hearing was fixed on 19-4-91 for the delinquent employee to make his representation with regard to his proposed punishment. The xerox copy of one such notice given to the delinquent employee is Ex. M147. Subsequently on the representation made by the concerned workman, the personal hearing was postponed to 10-5-91 and the same was intimated to the concerned workman by the Enquiry Officer-cum-Disciplinary Authority. The xerox copy of the same is Ex. M148. Subsequently, the final order has been passed dated 29-7-91 confirming the punishment proposed i.e. dismissal from the services of the bank without notice. The xerox copy of that final order is Ex. M149. Then the Management has filed an approval application before the Tribunal and the copy of that application alongwith administrative order 29-7-91 was sent to the concerned workman. The xerox copy of the same is Ex. M150. The Tribunal has passed an order dated 22-7-93 in that approval application filed by the Respondent/Management in view of the endorsement made by the counsel for the concerned workman by allowing the petition and granted approval as prayed for, subject to the right of the concerned workman to raise an industrial dispute. The xerox copy of that order is Ex. M153. The concerned workman has preferred an appeal against the punishment awarded to him by the Disciplinary Authority. The xerox copy of that appeal to the Appellate Authority is Ex. M151. The Appellate Authority passed an order dated 28-11-91. Considering the entire aspect, including the representation made by the delinquent employee in his appeal, the Appellate Authority has passed an order confirming the punishment awarded to the concerned employee by the Disciplinary Authority and has dismissed that appeal. The xerox copy of the order passed by the Appellate Authority is Ex. M152. As it has been conducted as domestic enquiry against this concerned employee, the Management had conducted a domestic enquiry separately for those misconducts against the then Manager Mr. R. Venugopalan of Thottiam Branch. The charge-sheet issued to him, the explanation given by him, and the Enquiry Officer's findings, final orders passed against that Manager, the charge-sheet issued to the subsequent Manager Mr. Veeraraghavan, his reply to the charge-sheet, report of the Enquiry Officer initiated against the subsequent Manager, Veeraraghavan, final order passed by the Disciplinary Authority in the enquiry against him, the appeal preferred by Mr.

Veeraraghavan and the orders passed by the Appellate Authority have been marked here as Ex. M154 to 164 with the consent of the counsel for the Petitioner.

6. In the Claim Statement filed by the Petitioner Union, it is alleged that the charges were very vague and not specific and the domestic enquiry conducted against the concerned workman was in utter disregard of all principles of natural justice, Bipartite Settlement and established rules of procedure of enquiry. It is further contended that non-production of basic report is a total denial of opportunity to the Petitioner to give his explanation and to defend him in the enquiry. In the Counter Statement itself, it is clearly stated that as far as the investigation report is concerned, it dealt with various other matters pertaining to Thottiam Branch and they are all of confidential in nature and since the investigating official himself was examined as witness to speak about the transaction, there was no need to produce investigation report. The perusal of the enquiry proceedings clearly show that the documents agreed to be produced by the Management were made available to the concerned workman and they were also filed in the enquiry and that the concerned workman had agreed to examine the witnesses. Further, it is seen from the enquiry proceedings that the divisional Manager who has conducted the investigation has been examined as first witness for the Management and another sub-staff of the bank was also examined as second witness in support of the charge. The concerned workman also examined five of the borrowers besides examined himself as a witness. Further, from the perusal of enquiry proceedings and the Enquiry Officer's report it is seen that the concerned workman as delinquent employee who was facing the charges levelled against him in the domestic enquiry was given sufficient opportunity to effectively defend himself in the enquiry. A perusal of the entire records would show that the domestic enquiry conducted against the Petitioner was not in utter disregard of all principles of natural justice, Bipartite Settlement and established rules of procedures of enquiry. Under such circumstances, it cannot be said that the domestic enquiry conducted by the Management against the concerned employee is not fair and proper and against the principles of natural justice.

7 It is seen from the records available that in the domestic enquiry the Respondent/Management had not relied upon the investigation report of the Divisional Manager, who conducted the inspection of Thottiam branch of the Respondent/Bank but he was examined as a Management witness to speak about this investigation. As it is held in a case reported as 1999 LLJ 175 U. P. STATE ROAD TRANSPORT CORPORATION & OTHERS AND MUSAIRAM

AND OTHERS, "the documents neither relevant to the charge nor relied upon by the authorities and the non-supply of such documents would not vitiate the proceedings of the domestic enquiry". This decision of the Supreme Court in the above case is squarely applicable to the facts of this case. The non-furnishing of the investigation report to the concerned workman who was the charge sheeted employee in the domestic enquiry, when the Management itself is not relying upon that document and not marked as an exhibit on their side to prove the charges levelled against the concerned workman cannot vitiate the domestic enquiry proceedings.

8 From the perusal of the entire records inclusive of the enquiry proceedings, the Enquiry Officer's report show that there were materials available by way of unimpeachable documentary evidence before the Enquiry Officer from him to come to the conclusion that the charges levelled against the concerned workman have been proved. So, this cannot be considered as a case of no evidence and the findings given by the Enquiry Officer in his report are perverse. In another case reported as AIR 1988 SC 117 CHANDRAMA THEWARI Vs UNION OF INDIA, the Supreme Court has held that "non-supply of copy of document which is not relied by the Enquiry Officer to support the charges does not amount to violation of principles of natural justice. No prejudice was caused to the delinquent in cross examine the Management witness who has spoken about his investigation in respect of the misconducts committed by the concerned workman as Cashier of the Thottiam branch of the Respondent/Bank. As it is held in a case reported as 1988 1 LLJ 628 Supreme Court, SECRETARY TO GOVT HOME DEPARTMENT AND OTHERS Vs. SRI VAIGUNDANATHAN, "the Tribunal cannot interfere with the findings of the Enquiry Officer unless the findings are perverse and not supported by any evidence." So, under such circumstances, this Tribunal cannot also interfere with the findings of the Enquiry Officer under Ex M 146.

9. There are sufficient evidence available in this case which were relied upon by the management before the Enquiry Officer to hold that the concerned workman as Cashier of the Thottiam Branch of the Respondent/Bank has violated the instructions mentioned in the Book of Instruction Ex. M 1 in dealing with the IRDP scheme loans in respect of 33 borrowers. In addition to that there are evidence to show that he had made entries in the documents of the bank as though remittance have been made by

the borrowers towards the IRDP loans advanced to them without actually made any remittance. As a cashier he has initialled in the remittance challan as though amounts have been remitted under those challans by the concerned borrowers and also made entries in the cash remittance scroll, which is only a manipulation of records by false entries and that has been done only by him with an ulterior motive of availing unlawful gain along with others concerned. From the records, it is seen that the concerned workman Sri S. Kannan was responsible for taking signature of the borrowers in the vouchers which he failed to do. Further it is seen from the records that the Divisional Manager visits the Branch on 19-5-87 all loans were closed which made him to suspect those transactions. In addition to the evidence of the said Divisional Manager, the then sub-staff of the branch also gave evidence before the Enquiry Officer in support of the charges levelled against the concerned workman. In the enquiry report, the Enquiry Officer has elaborately dealt with the exhibits to come to the conclusion that the charges levelled against the concerned workman have been proved. The charge sheeted employee while giving his reply to the charge sheet has not stated at the earliest point of time that the charges were vague. The Enquiry Officer while giving his findings has dealt with all the objections raised by the defence and has given his final order. From the available evidence, it is seen that the concerned employee Sri S. Kannan in collusion with the Branch Manager and the IRDP loan borrowers has availed the subsidy entrusted by the Government towards the IRDP loan to the bank as custodian, which in turn affects the interest of the Bank, as per the Bipartite Settlement. Apart from, it amounts to gross dereliction of duty of the concerned workman, it had resulted in fraudulent withdrawal of subsidy. As it is contended by the Respondent/Management in the Counter itself, the conduct of the concerned workman has shaken the confidence the Respondent had in him and therefore, the concerned workman should not be given any relief, muchless the relief of reinstatement. From all these materials available in this case, it can be held that the action of the Management Karur Vysya Bank in terminating the services of Sri S. Kannan w.e.f. 29-7-91 is justified. Hence, the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

10. In the result, an Award is passed holding that the action of the Management of Karur Vysya Bank Ltd. In terminating the services of Sri S. Kannan w.e.f. 29-7-91 is justified.

Hence, the concerned workman is not entitled to any relief No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th September, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None

Documents Marked :

For I Party/Claimant : Nil

For the II Party/Management :---

Ex.No. Date Description

M1	Nil	Xerox copy of Book Instructions Part III Misc. Services page 55-60 and 99-105.
M2	19-06-87	Xerox copy of order of suspension issued to Petitioner.
M3	13-07-87	Xerox copy of the charge sheet issued to the Petitioner.
M4	22-07-87	Xerox copy of the reply of Petitioner to the Charge sheet.
M5	05-08-87	Xerox copy of the letter of Respondent/Bank To the Petitioner regarding intimation of enquiry.
M6	11-09-87	Xerox copy of the communication about change of Enquiry Officer and notice in this regard.
M7	26-11-87 27-11-87	Xerox copy of the communication about change of Enquiry Officer and notice in this regard.
M8	13-01-88	Xerox copy of the notice of first sitting of enquiry.
M9	23-01-88 29-02-88 01-03-88 24-03-88 26-05-88 04-06-88 & proceedings 10-06-88	Xerox copy of the enquiry proceedings
M10	27-04-87	Xerox copy of the cash/transfer scroll of Thottaiyam Branch.
M11	27-04-87	Xerox copy of the cash debit voucher for Rs. 6000/- In respect of HPL(M) 3/87
M12	27-04-87	Xerox copy of the cash debit voucher for Rs. 6000/- In respect of HPL(M) 4/87

M13	27-04-87	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 8/87.
M14	27-04-87	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 9/87
M15	27-04-87	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 10/87
M16	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- for the payment made to K. Pachamuthu.
M17	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 2/87.
M18	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 3/87.
M19	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 6/87
M20	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 7/87
M21	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 8/87.
M22	27-04-87	Xerox copy of the cash debit voucher for Rs. 6000/- In respect of HPL(Cart) 4/87.
M23	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of IL 2/87.
M24	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of IL 3/87.
M25	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of IL 5/87.
M26	27-04-87	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of IL 6/87.
M27	28-04-87	Xerox copy of the cash debit voucher for Rs. 6000/- In respect of HPL(M) 2/87.
M28	22-04-87	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL (M) 5/87.
M29	28-04-97	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 6/87.

M30	28-04-97	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 7/87.	M47	16-06-87	Xerox copy of the statement of C. Prabhakar, Sub-staff, Thottiyam Branch to Divisional Manager, Karur Vysya Bank Ltd. Chennai.
M31	28-04-97	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 11/87.	M48	Nil	Xerox copy of the page 104 of book of instructions part III Misc. Services—Containing accounting procedures.
M32	28-04-97	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 12/87.	M49	29-09-87	Xerox copy of the credit slip for HPL (cycle) 7/87
M33	28-04-97	Xerox copy of the cash debit voucher for Rs. 5500/- In respect of HPL(M) 14/87.	M50	Nil	Xerox copy of the specimen of credit slip with Counterfoil.
M34	28-04-97	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HP (Cycle) 4/87.	M51	Nil	Xerox copy of the specimen of cash debit voucher.
M35	28-04-97	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 5/87.	M52	Nil	Xerox copy of the page 100 of book of Instructions part III Misc. Services—Containing accounting procedures.
M36	28-04-97	Xerox copy of the cash debit voucher for Rs. 3000/- In respect of HPL(Cycle) 9/87.	M53	28-04-87	Xerox copy of the cash debit voucher in JML Agri 53/87
M37	28-04-97	Xerox copy of the cash debit voucher for Rs. 900/- In respect of HPL(Cart)1/87.	M54	17-06-87	Xerox copy of the letter of Divisional Manager Issued to Petitioner
M38	28-04-97	Xerox copy of the cash debit voucher for Rs. 7000/- In respect of HPL(Cart)2/87.	M55	27-04-87	Xerox copy of the FD credit Challan in the name of Mr. M. Veerasamy for Rs. 2100/-
M39	28-04-97	Xerox copy of the cash debit voucher for Rs. 7000/- In respect of HPL 3/87.	M56	27-04-87	Xerox copy of the FD credit Challan in the name of Sri T. Subramanain for Rs. 2100/-.
M40	28-04-97	Xerox copy of cash debit voucher for Rs. 9000/- In respect of IL 1/87.	M57	27-04-87	Xerox copy of the FD credit Challan in the name of Smt. Annapoorani for Rs. 2100/-.
M41	28-04-97	Xerox copy of the cash debit voucher for Rs. 9000/- In respect of IL2/87.	M58	27-04-87	Xerox copy of the FD credit Challan in the name of Mr. P. Selvaraj for Rs. 2000/-.
M42	28-04-97	Xerox copy of the cash debit voucher for Rs. 4500/- In respect of IL 4/87.	M59	27-04-87	Xerox copy of the FD credit Challan in the name of Sri N. Arumugam for Rs. 2100/-.
M43	28-04-97	Xerox copy of the cash-debit voucher for Rs. 3000/- In respect of IL 7/87.	M60	27-04-87	Xerox copy of the FD credit Challan in the name of Sri S. Kalliyar for Rs. 3700/-.
M44	17-06-87	Xerox copy of the statement from proprietor of Usha Enterprises to Divisional Manager, Karur Vysya Bank Ltd. Chennai.	M61	27-04-87	Xerox copy of the FD credit Challan in the name of Mr. M. Sadayan for Rs. 4100/-.
M45	17-06-87	Xerox copy of the statement from proprietor of Lingam Cycle Mart to Divisional Manager, Karur Vysya Bank Ltd. Chennai.	M62	27-04-87	Xerox copy of the FD credit Challan in the name of Smt. Annapoorani for Rs. 2100/-.
M46	17-06-87	Xerox copy of the statement from proprietor of Saravana Electronics to Divisional Manager, Karur Vysya Bank Ltd. Chennai.			

M63	27-04-87	Xerox copy of the FD credit Challan in the name of Smt. Marimuthammal for Rs. 4100/-.	M79	28-04-87	Xerox copy of the FD credit Challan in the name of Sri A. Arunachalam for Rs. 4000/-.
M64	31-03-87	Xerox copy of the FD credit Challan in the name of Smt. Kaliyammal for Rs. 3700/-.	M80	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 2/87.
M65	27-04-87	Xerox copy of the FD credit Challan in the name of Mr. P. Jagannathan for Rs. 3700/-.	M81	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 3/87.
M66	27-04-87	Xerox copy of the FD credit Challan in the name of Sri T. Ramani for Rs. 2000/-.	M82	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 5/87.
M67	27-04-87	Xerox copy of the FD credit Challan in the name of Sri A. Sanniyasi for Rs. 4000/-.	M83	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 6/987.
M68	27-04-87	Xerox copy of the FD credit Challan in the name of Sri M. Neelan for Rs. 2100/-.	M84	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 1/87.
M69	28-04-87	Xerox copy of the FD credit Challan in the name of Sri R. Kannan for Rs. 4000/-.	M85	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 2/87.
M70	28-04-87	Xerox copy of the FD credit Challan in the name of Sri P. Murugesan for Rs. 4100/-.	M86	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 3/87.
M71	28-04-87	Xerox copy of the FD credit Challan in the name of Sri P. Devaraj for Rs. 4000/-.	M87	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 6/87.
M72	28-04-87	Xerox copy of the FD credit Challan in the name of Sri P. Kannusamy Achari for Rs. 2100/-.	M88	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 7/87.
M73	28-04-87	Xerox copy of the FD credit Challan in the name of the Sri P. Anbalagan for Rs. 7500/-.	M89	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 8/87.
M74	28-04-87	Xerox copy of the FD credit Challan in the name of Sri A. Janakar for Rs. 4400/-.	M90	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 3/87.
M75	28-04-87	Xerox copy of the FD credit Challan in the name of Smt. K. Dhanam for Rs. 2400/-.	M91	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 4/87.
M76	28-04-87	Xerox copy of the FD credit Challan in the name of Sri M. Raju for Rs. 2100/-.	M92	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 8/87.
M77	31-03-87	Xerox copy of the FD credit Challan in the name of the Sri M. Kulandaivelu for Rs. 4100/-.			
M78	28-04-87	Xerox copy of the FD credit Challan in the name of Sri Pitchamuthu for Rs. 4000/-.			

M93	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 9/87.	M108	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 in respect of HPL (Cart) 4/87.
M94	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- In respect of HPL (M) 10/87.	M109	27-04-87	Xerox copy of the cash credit voucher for Rs. 250/- in respect of HPL (Cart) 4/87.
M95	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cart) 4/87.	M110	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 4/87.
M96	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 1/87.	M111	27-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 5/87.
M97	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 2/87.	M112	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cycle) 9/87.
M98	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 8/87.	M113	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Ty. Cart) 1/87.
M99	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 3/87.	M114	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cart) 2/87.
M100	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 6/87.	M115	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (Cart) 3/87.
M101	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 6/87.	M116	28-04-87	Xerox copy of the cash credit voucher for Rs. 50/- in respect of TL1/87 & 2/87.
M102	27-04-87	Xerox copy of the cash credit voucher for Rs. 3/- in respect of HPL (Cycle) 8/87.	M117	28-04-81	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL/4/87.
M103	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 in respect of HPL (M) 3/87.	M118	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 7/87.
M104	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 in respect of HPL (M) V. Marimuthammal.	M119	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of IL 2/87.
M105	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.40 in respect of HPL (M) 8/87.	M120	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL 5/87.
M106	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 in respect of HPL (M) 9/87.	M121	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 6/87.
M107	27-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 in respect of HPL (M) 10/87.	M122	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 7/87.
			M123	20-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 11/87.
			M124	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- in respect of HPL (M) 12/87.

M125	28-04-87	Xerox copy of the cash credit voucher for Rs. 25/- In respect of HPL (M) 13/87.	M142	28-04-87	Xerox copy of the cash credit voucher for Rs. 100/- In respect of HPL (Cart) 4/87.
M126	28-04-87	Xerox copy of the cash credit voucher for Rs. 3/- In respect of IL 7/87.	M143	28-04-87	Xerox copy of the cash credit voucher for Rs. 100/- In respect of HPL (Cart) 3/87.
M127	28-04-87	Xerox copy of the cash credit voucher for Rs. 11/- In respect of TL 1/87 & 2/87.	M144	Nil	Xerox copy of the Book of Instructions Part-III misc. Services-page 57 & 58.
M128	28-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 In respect of HPL (M) 2/87.	M145	Nil	Xerox copy of the Book of Instructions Part-I Advances Page 1 & 2.
M129	28-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 In respect of HPL (M) 11/87.	M146	10-04-91	Xerox copy of the report of Enquiry Officer
M130	28-04-87	Xerox copy of the cash credit voucher for Rs. 5.50 In respect of HPL (M) 5/87.	M147	10-04-91	Xerox copy of the notice from Enquiry Officer Regarding proposed punishment.
M131	28-04-87	Xerox copy of the cash credit voucher for Rs. 5.50 In respect of HPL (M) 11/87.	M148	24-04-91	Xerox copy of the letter from Enquiry Officer Adjourning the the proposed punishment at the Request of the Petitioner.
M132	28-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 In respect of HPL A. Jawahar.	M149	29-07-91	Xerox copy of the final order passed by the Enquiry Officer.
M133	28-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 In respect of HPL (M) 13/87.	M150	29-07-91	Xerox copy of the administrative order issued to Petitioner enclosing a copy of approval Application.
M134	28-04-87	Xerox copy of the cash credit voucher for Rs. 3/- In respect of HPL (Cycle) 5/87.	M151	09-10-91	Xerox copy of the appeal preferred by Petitioner
M135	28-04-87	Xerox copy of the cash credit voucher for Rs. 6/- In respect of HPL 5/87.	M152	28-11-91	Xerox copy of the order passed by Appellate Authority.
M136	28-04-87	Xerox copy of the cash credit voucher for Rs. 3/- In respect of HPL (cycle) 9/87.	M153	22-07-93	Xerox copy of the order of Industrial Tribunal on approval application.
M137	28-04-87	Xerox copy of the cash credit voucher for Rs. 5.50 In respect of HPL (Cart) 2/87.	M154	13-07-87	Xerox copy of the charge sheet issued to the then Manager Mr. R. Venugopalan, Thottiyam branch
M138	28-04-87	Xerox copy of the cash credit voucher for Rs. 5.50 In respect of HPL (Cart) 3/87.	M155	12-08-87	Xerox copy of the explanation given by the then Manager Mr. R. Venugopalan.
M139	28-04-87	Xerox copy of the cash credit voucher for Rs. 2.50 In respect of HPL (M) 6/87.	M156	10-04-91	Xerox copy of the report of Enquiry Officer in The enquiry initiated against R. Venugopalan.
M140	28-04-87	Xerox copy of the cash credit voucher for Rs. 5.50 In respect of HPL (Cart) P. Panda;	M157	09-10-91	Xerox copy of final order passed in the Enquiry against R. Venugopalan, then Manager,
M141	28-04-87	Xerox copy of the cash credit voucher for Rs. 300/- In respect of HPL (Cart) 1/87.	M158	13-07-87	Xerox copy of the charge sheet issued to Mr. P.A. Veeraraghavan, Subsequent Manager of Thottiyam branch.

- M159 11-08-87 Xerox copy of the reply of Mr. P.A. Veeraraghavan, Subsequent Manager of Thottiyam branch.
- M160 13-04-89 Xerox copy of the report of Enquiry Officer in the enquiry initiated against P.A. Veeraraghavan
- M161 28-06-89 Xerox copy of the final order passed by the Disciplinary Authority in the enquiry against P.A. Veeraraghavan subsequent Manager of Thottiyam branch.
- M162 11-08-89 Xerox copy of the appeal preferred by P.A. Veeraraghavan, subsequent Manager of Thottiyam branch
- M163 01-11-89 Xerox copy of the order of Appellate Authority on the appeal preferred by Sri P.A. Veeraraghavan, subsequent, Manager of Thottiyam branch proposing to enhance the punishment and calling for his representation.
- M164 16-06-90 Xerox copy of the orders of Appellate Authority on the appeal preferred by Shri P.A. Veeraraghavan subsequent Manager of Thottiyam branch.

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्तर्बंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[सं. एल-12012/193/92-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (Labour Court, Nagpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 29-10-2001.

[No. L-12012/193/92-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT : 29/99

Bank of India

AND

Shri Vinayak U. Joshi.

AWARD

The Central Government Ministry of Labour, New Delhi, by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/193/92/IR (B-II) dated : 30-10-92 on the following schedule.

SCHEDULE

“Whether the action of the management of Bank of India, Zonal Manager, Nagpur in refusing to sanction the Spl. Leave to Shri Vinayak U. Joshi, Central Executive Committee member of National Organisation of Bank Workers and Jt. Secretary of Bank of India Workers' Organisation NOBW, Nagpur is justified? If not, to what relief is the workman entitled?”

The workman Vinayak U. Joshi has submitted Statement of Claim that he was elected the Central Executive Member of the National Organisation of Bank Workers from 8-2-90. Under Clause 13.39 of first by-partite settlement of 1966, he is entitled to Special Leave from Feb, 1990. Management, Bank of India has refused to grant him the aforesaid facility. Resultantly all such leave has been either debited to personal Leave of the workman or has been treated as Leave as Loss of Pay.

In the Written Statement filed by the management of Bank of India through it's Zonal Manager S. V. Patel, the management denied that Vinayak U. Joshi is Central Executive Member of National Organisation Bank Workers, which is a Federation of the registered Trade Union of Bank Employees affiliated to Bharatiya Mazdoor Sangh. The management denied that he was elected as Central Executive Committee member of National Organisation of Bank Workers in the conference held on 8-2-90. It is also mentioned that the management had also not received any request either from National Organisation of Bank Workers which is a Central Organisation or Vidarbha Bank Employees Federation which is a regional organisation for grant of such a special leave to Vinayak Joshi for attending any conference or meeting. Vinayak Joshi only informed the bank that he attended the meetings and conferences of his union. The workman concerned must be duly notified by the Indian Bank Association. The list supplied by Indian Bank Association for the purposes of Clause 13.39 does not contain the name of Vinayak U. Joshi.

The statement of Vinayak Joshi was recorded and he was cross examined on 1-3-2000. Ashokji Bhutad also appeared as a witness for the workman. From the side of management the statement of P. M. Pandit

Officer of the bank was recorded on 20-9-2000. The parties also submitted documents.

In cross examination Vinayak Joshi stated that he has not filed any document to show that he is entitled to Special Leave of 17 days for each year from 1992. It is suggested to this witness by the management that the workman is not entitled for 17 days Special Leave from 1992 to 1997. The witness also admitted in cross examination that vide Letter No. PD/CIR/76/H(a)/1639 dated : 19-1-98, special facility has been provided to the officer bearer and Central Committee member of National Organisation of Bank Workers in terms of Clause 13.39 of the by-partite Settlement dated 19-10-66. This facility has been extended w.e.f. 1-10-97. It is therefore clear that the workman Vinayak Joshi is entitled Special Leave Facility w.e.f. 1-10-97.

Another witness Ashokji Bhutad has stated that it is true that from 1983 to 2nd September, 1997 National Organisation of workers was not a party in the by-partite settlement. It is therefore clear that upto September, 1997 the workman was not entitled to the facility of 17 days Special Leave.

Shri P. M. Pandit the witness of the management stated that he is in the service of Bank of India since 1972. He also stated that Letter No : PD/CIR/76/H(a)/1639 dated 19-1-98 has been filed by the management. This document is Exhibit W-2. According to this letter the facility for Special Leave has been provided to the Central Committee Member of National Organisation of Bank Workers under Clause 13.39 of by-partite settlement w.e.f. 1-10-97.

Thus from the above evidence and the documents referred to above Vinayak Joshi is entitled to Special Leave under Clause 13.39 of by-partite settlement w.e.f. 1-10-97.

Letter No : NEB/FRS/ARM/476 dated 7-7-99 also shows that Vinayak Joshi has been granted Special Leave from 1-10-97 in terms of Clause 13.39 of by-partite settlement dated 19-6-66. In view of the facts and evidence discussed above the workman Vinayak U. Joshi is entitled to Special Leave as Central Executive Committee member of National Organisation of Bank Workers and Joint Secretary, Bank of India Workers Organisation from 1-10-97.

ORDER

The action of the management of Bank of India, Zonal Manager, Nagpur in refusing to sanction the Special Leave to Shri Vinayak U Joshi, Central Executive Committee Member of National Organisation of Bank Workers and Joint Secretary of Bank of India Workers' Organisation (NOPW) Nagpur from February 1990 to 30th September 1997 was justified. The workman is entitled to Special Leave facility from 1-10-97 in terms of Clause 13.39 of BP Settlement dated 19-10-66.

The reference is disposed of accordingly.
Date : 15-10-2001.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेदिल्ली के श्रम विभाग के प्रवक्ता के समक्ष नियोजका और उनके कर्मकारों के बीच, अनुवध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, सम्पर्क के पत्राट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2001 को प्राप्त हुआ था।

[स. पत्र-12012/306/1998-आई आर (बी-2)]

गी गंगधरन, अवसर सचिव

New Delhi, the 30th October, 2001

S.O. 3219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Govt. Industrial Tribunal-cum-Labour Court-II Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on 29-10-2001.

[N.Y. L-12012/306/1998-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II.
MUMBAI

PRESENT

S. N. Saundankar, Presiding Officer
Reference No. CGIT-2/124 of 1999
Employers in relation to the Management
of Central Bank of India.

The Regional Manager,
Central Bank of India,
Goa Regional Office,
Manscarehas Building,
Antao de Noronha Road,
Panaji,
Goa-403001.

AND

Their Workmen

Sh. Deepak Rainikant Chodankar,
H. No. 1333, Bansore, Post Betul,
Taluka Saleeta,
Goa.

APPEARANCES :

For the Employer.—Mr. D.S.N. Alornekar Representative.

For the Workmen.—Mr. M. B. Anchan, Advocate.

Mumbai, dated 29th September, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012 396 98/IR (B II), dtd. 12-05-1999, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication :—

“Whether the action of the Regional Manager, Central Bank of India, Goa in terminating the services of Sh. Deepak Rajnikant Chodankar, Ex-Sub-Staff of Cuncolim Branch of Central Bank of India w.e.f. 23-11-97 is legal and justified? If not, what relief the workman is entitled to?”

2. Deepak Rajnikant Chodankar filed Statement of Claim (Exhibit-5). He pleaded that he was employed as a sub staff in the Cuncolim Branch of Central Bank of India. He worked more than 240 days from 10-3-97 to 22-11-97 in different names, since he was not allowed to work in one name. It is contended that when he requested for his regularisation in service, he was terminated by the order of Regional Manager, Goa dtd. 23-11-97. He was not given notice pay nor the retrenchment compensation. It is contended he was advised by the Branch Manager to work in different names to avoid continuous service for more than 59 days in a stretch. He was working against the regular vacancy. Though he was working in different names the staff was known to him. It is contended as per the circular of the bank since he completed more than 90 days, he was entitled to regularisation in service. His termination of service is illegal and therefore he prayed for reinstatement in service with full back wages.

3. The management Central Bank of India, resisted the claim of Shri Chodankar by filing Written Statement (Exhibit 8) contending that Chodankar in collusion with the employee of the bank working in fictitious names, deceived the bank and therefore he does not deserve

to continue in the bank. It is contended since he has not come with clean hands he is not entitled to any reliefs as per the Principles of Natural Justice. He was engaged purely on casual basis when the regularly appointed sub-staff was on leave, and therefore in no case he was continuously engaged to work and therefore he is not entitled for appointment in the bank. It is contended as per banks policy, no Branch Manager is empowered to employ any person as casual worker for more than 59 days in a year. It is contended after discontinuation of Mr. Chodankar, nobody was recruited and since he practised fraud on the bank, cannot be absorbed in the service. Consequently management prayed to dismiss the claim of Chodankar. By way of Rejoinder (Exhibit-9) Chodankar reiterated the recitals in the Statement of Claim and denied the contentions in the Written Statement.

4. My Learned Predecessor framed issues at Exhibit-10 on the basis of the rival pleadings. Deepak Chodankar filed affidavit (Exhibit-11) by way of Examination-in-Chief and he was cross examined by the management representative and thereafter closed his evidence vide purshis (Exhibit-13). On behalf of the Central Bank Bank Officer, Shri Alornekar examined himself at Exhibit-14. He was cross examined by the counsel for the employee and thereafter closed evidence vide purshis (Exhibit 16).

5. Chodankar filed Written Submissions at (Ex-19) and the management, bank at (Ex-17). Heard the Learned Counsel and the Representative for both the parties and perused the record as a whole.

6. On hearing the counsels and perusing the record as a whole and the Written Submissions, I register my findings on the following issues for the reasons mentioned below :—

- | Issues | Findings |
|---|---------------|
| 1. Whether the workman was in continuous employment of the management as contemplated under section 25 B of the Act? | Yes. |
| 2. Whether the action of the management in terminating the services of Deepak Rajnikant Chodankar is legal and justified? | Yes. |
| 3. If not, to what relief the said workman is entitled to? | As per order. |

REASONS

7. Admittedly Shri Chodankar worked as a sub-staff in Central Bank of India, Cuncolim Branch, for more than 240 days from 10-3-97 to 22-11-97 as a casual labour. According to Chodankar as per the advise of the Branch Manager, Cuncolim Branch he worked as above in different names to avoid continuous services of more than 59 days in stretch. The bank officer Mr. Alornekar, in his affidavit, para 6, pointed out as to how Mr. Chodankar worked as a sub-staff in three names viz.

Rupesh Chodankar; Ajit Chodankar; Nitin Zuvarkar and that he received wages under vouchers in those names. According to him, Chodankar thereby in collusion with the employee of the bank deceived the bank, working in fictitious names and that this approach of Mr. Chodankar, is absolutely a curse and not a boon in any way to the healthy growth of the banking institution and he is required to be away from banking institution where public money is involved and therefore the banks action is totally justified.

8. As stated above Mr. Chodankar admittedly worked more than 240 days during the calendar year preceding his termination dtd. 23-11-97. The Learned Counsel for Chodankar, inviting attention of this tribunal to the definition of Section 25B of the Industrial Disputes Act submits that, since he continuously worked he cannot be retrenched without notice pay and retrenchment compensation and that nothing on record to show that the bank complied with the same, and therefore the bank's action of his termination is illegal. Their Lordships in Zakir Hussain V. Engineer-in-Chief, Irrigation Deptt. AIR 1993 LAB IC 836 observed :

"Merely because an employee has worked for two or three years on daily wages basis he can not claim regularisation of service as a matter of right. Regularisation cannot be made as 'rule of thumb' on the basis of completion of certain years of service of such an employee. It all depends on various facts, and it is for the employer to decide as to whether in view of the facts and circumstances of the case, the services of those employees who were appointed on ad hoc/daily wages basis should be regularised."

9. Chodankar candidly admitted that he worked in the bank on casual basis in different names. However, according to him he so worked on the advise of Manager, Mr. A. R. Salgaonkar. He did not venture to examine Salgaonkar to throw light in the matter. The Learned Counsel Shri. Anchan for Chodankar submits that bank initiated departmental inquiry against Branch Manager, Salgaonkar itself indicates that he was at fault and not Mr. Chodankar. Chodankar cannot digest his misdeed throwing mud on the others. He had gone to the extent of receiving wages under voucher in three names. Assuming for a moment, Salgaonkar advised him to do so but still it was for Chodankar to work as per his conscience. Chodankar would not have certainly jumped in the dry well on the advise of Manager, and considering the matter from this point of view, hardly lie in the mouth of Chodankar that he did so on the advise of Salgaonkar. This is clearly indicative to shown that Chodankar was not with clean hands and that equity also does not help to such persons. Chodankar working in fictitious names, certainly deceived the bank and therefore considering the matter from this point of view action of the management can certainly said to be proper and justified.

10. A lame excuse has been taken by Shri Chodankar to cover his misdeed, that, manager is not allowed to engage a casual worker for more than 59 days in a year therefore for smooth working of the bank, Manager, adjusted by engaging him in different names. This cannot said to be an adjustment when openly fraud is played on the public financial institution. of which faith is the foundation.

11. From the evidence it is clear that Chodankar worked for more than 240 days as contemplated under section 25 B of the Industrial Disputes Act. However in view of the discussion and in the light of the decisions supra in Zakir Hussain V. Engineer-in-Chief, Irrigation Deptt., regularisation cannot be made as a rule of thumb, and it all depends on the facts, therefore, termination of Chodankar is absolutely just, proper and legal, and therefore in any event he does not deserve any relief. Issues are answered accordingly and hence the order :—

ORDER

The action of the Regional Manager, Central Bank of India, Goa in terminating the services of Shri Deepak

Rajnikant Chodankar, Ex-Sub-Staff of Cuncolim Branch of Central Bank of India w.e.f. 23-11-97 is just legal and proper.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निष्पक्ष औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-01 को प्राप्त हुआ था।

[सं. एल-12012/280/1999-आई आर (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 30th October, 2001

S.O. 3220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Bank of India and their workmen, received by the Central Government on 29-10-2001.

[No. L-12012 280/1999-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT:

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT/46/2000

Bank of India

AND

Kumar Vijaya Shamrao Meshram

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide order No. L-12012/280/99-IR(B-II), dated 23-2-2000 on the following schedule:—

SCHEDULE

"Whether the action of management of Bank of India, Nagpur in terminating the services of Kumari Vijaya D/o Shamrao Meshram w.e.f. 1-7-1999 is legal and justified? If not, what relief the said workman is entitled to and from what date?"

The workman Kumari Vijaya S. Meshram has submitted statement of claim that she was in employment of Bank of India from 9-1-96 and was performing the duties of general nature which are performed by the peon. Her service was terminated on 1-7-99.

She has mentioned that she was sweeping the office premises when permanent peon was on leave. She was attending the bank from 7.30 A.M. for filling the water as Corporation water was available at 7.30 A.M. She was being paid Rs. 100 as her salary on the last day of the each month. For additional work of sweeping she was paid Rs. 60 per day of actual working. Her service has not been regularised. She claimed reinstatement with full back wages.

The management in their Written Statement has mentioned that she was engaged for half an hour only during the working days of the branch of the bank for fetching water. She was being paid Rs. 1000 per month. She was not appointed by the bank for any regular job. She was not paid any bonus and Provident Fund was also not deducted. As she was doing the work of fetching the water for thirty minutes every day she was not the employee of the bank and cannot claim regularisation of her service.

The workman Kumari Vijaya filed affidavit in this Court on 26-6-2000 in English. She had signed the above affidavits in Hindi. In the affidavit it is mentioned that the contents of the affidavits have been explained by the counsel. On 27-9-2000 when the witness Kumari Vijaya was called for cross examination she did not prefer to stand cross examination. The counsel for the workman represented that the workman can not answer the question in Hindi or in English. She knows only Marathi. The workman did not produce any other witness. From the side of the management the affidavit of Waman S/o Hari Kohad was filed on 26-12-2000. He has mentioned that he was working as Asstt. Manager in Bank of India, Rana Pratap Nagar Branch, Nagpur, from December, 1998 to June, 1999. Kumari Vijaya was not appointed in the aforesaid branch of Bank of India on 9-1-96. She has submitted false statement of claim. Kumari Vijaya Meshram was engaged to fetch water from the tap in the morning hours and to fill the same into containers kept in the branch. She only worked from 7.30 A.M. to 8.30 A.M. She was being paid Rs. 100 per month for this work. Another affidavit of Vilas Vasant Diwase was filed by the management on 8-8-2000. He also stated that Kumari Vijaya was working for only 30 minutes for fetching water from the tap in the morning hours and was paid Rs. 100 per month. She was not performing the duty of Peon.

Kumari Vijaya submitted a Counter Affidavit on 31-1-2001. In this affidavit she has mentioned that she was appointed on vacant post. She also admitted that she was doing the work of filling the water in the containers of bank.

The parties have also submitted their Written Arguments. I have considered the entire evidence on record and the arguments filed by the parties.

It is evident from affidavits filed by the parties that Kumari Vijaya was doing the work of filling the water in the containers of the bank. In the statement of

claim as well Kumari Vijaya stated that she was getting Rs. 100 per month on the last day of each month. It is therefore clear that neither she was working as a Peon in the bank nor she was drawing the salary from the bank as sub-staff or Peon. No letter of appointment has been filed by Kumari Vijaya in the Court.

In view of the above facts there is no document on the file to show that Kumari Vijaya was appointed by the bank as a Peon or as a Class-IV employee. She was getting Rs. 100 per month from the bank for fetching water and filling it in the containers of the bank. In the above circumstances the workman was not an employee of the bank and her service was rightly terminated.

ORDER

The action of the management of Bank of India, Nagpur in terminating the services of Kumari Vijaya D/o Shamrao Meshram w.e.f. 1-7-99 is legal and justified. The workman is not entitled to any other relief claimed by her.

The reference is answered accordingly.

Dated : 12-10-2001.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 31 अक्टूबर, 2001

का.आ. 3221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण स. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2001 को प्राप्त हुआ था।

[स. एम.-11025/7/87-डा IV (बी)/(सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 31st October, 2001

S.O. 3221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-10-2001.

[No. S-11025/7/87-D.IV(B)/(C-1)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 10 of 1988

PARTIES :

Employers in relation to the management of M/s Bharat Coking Coal Ltd. and their workman.

APPEARANCES :

On behalf of the workman : Shri D. K. Verma, Advocate.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Jharkhand.

INDUSTRY : Coal.

Dated, Dhanbad, the 12th October, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 had referred the following dispute to the then Central Government Industrial Tribunal No. 3, at Dhanbad vide Ministry's Order No. L-20012(293)/83-D.III(A), dated, the 3rd February, 1984. Subsequently the said reference has been transferred to this Tribunal for adjudication vide Ministry's letter No. S-11025/7/87-D.IV(B), dated the 31st December, 1987 :

SCHEDULE

"Whether the promotions made by the management of M/s. Bharat Coking Coal Limited, Dhanbad through General Manager, Katras Area No. IV/PM/MP/1-32/6355 dated 16-7-1982 and No. GM/SA/PM/Office Order/3A/2382 dated 31-5-1983 are consistent with the promotion policy of Messrs. Bharat Coking Coal Ltd., circulated vide No. BCCL/PA/11/78-6241—6320 dated 20-2-1978 ? If so, to what benefits are other seniors to the workmen promoted in the said orders in the same cadre of BCCL entitled and from what date ?"

2. The case of the concerned workman as per W.S. in brief is as follows :

It has been submitted that the concerned workmen were working as Electrician/Assistant Foreman/Foreman at Moonidih Project and Head Quarters of M/s. BCCL on permanent basis. They submitted that the management maintained a promotion policy for E & M non-executive cadre and in accordance with the said promotion policy the General Manager of a particular area of M/s. BCCL is the cadre controlling authority for the post of Cat. VI and Technical Supervisory Grade-C and the Chief Engineer (E & M) is the cadre controlling authority for the post of Technical and Supervisory Grades B and A and they exercised their authorities subject to clause 6.0 of the promotion scheme. It has been alleged by the concerned workmen that the management in utter violation of the promotional policy circulated vide order No. BCCL/PA-II/78/6241-6320 dated 20-2-1978 & promoted/regularised the services of nine workmen to Electrical Supervisor and Technical Grade-A vide office Order

of the Personnel Manager Katras Area IV/Sijua vide No IV/PB/MP(A-37)/6355 dated 16-7-82 and again promoted/regularised 22 workmen vide Office Order No GM/8A/PM/Office Order/3A/2389/83 dated 31-5-83 in the post of Electrical Supervisor and Technical Grade-A. The concerned workmen submit that they are quite senior and more qualified and experienced than the workmen promoted to the post of Electrical and Supervisory Grade-A and accordingly, they have been superseded by order of the management ignoring their qualifications and seniority. They submitted that they are very much eligible for promotion to Technical Grade-A from the same date on which their juniors were promoted as per order dated 16-7-82 and 31-5-83 issued by the management. They alleged that such illegal supersession by whimsical decision of the management created serious resentment amongst the workmen, working under the management. Accordingly the concerned workmen have prayed for passing an Award declaring that the impugned promotion order dated 16th July, 1982 and 31-5-1983 in the form of regularisation is not consistent with the promotion of BCCL vide No BCCL/PA/II/78/6241—6320, dated 20-2-78 and accordingly they are entitled to be treated as Technical Grade A from the date when their juniors were regularised/promoted in Technical Grade-A. The concerned workmen also have placed their claim that they are entitled to get difference of wages and other benefits for the said period.

3. The management on the contrary after filing WS-cum rejoinder have denied all the claims and allegation which the concerned workmen asserted in their WS. They submitted that BCCL is a vast organisation with about 100 collieries, washeries and other projects and establishment. Under them about 1.75 lakh employees work. The collieries have been also divided into a number of areas being headed by a Senior Mining Engineer in the rank of Dy Chief Mining Engineer/Superintendent. The areas have been constituted for efficient and effective functioning of the collieries and their administration. The management further submitted that Head Office of M/s BCCL controls the various collieries, areas, projects and other establishments and sometimes due to vast size of the organisation and complexities of the organisational set up etc. it becomes difficult to ensure that the policies laid down by the company are properly implemented by the various areas/units etc. However if any mistakes are made or irregularities are committed the matters are investigated and necessary action is taken. They further submitted that the promotion policy for Electrical and Mechanical non-executive cadre in BCCL was issued vide circular No BCCL/PA/II/78/6241—6320 dated 20-2-1978 in consultation with various trade unions. The said circular has clearly mentioned how the promotional matter of the Electrical and Mechanical cadre should be taken into consideration. The management submitted that Katras Area and Sijua area by issuing two circulars No IV/PM/MP(A-3)/6355 dated 16-7-82 and GM/SA/PM/Office Order/3A/2389/83 dated 31-5-83 promoted some Electricians Asst. Foreman, Foreman to the post of Electrical and Supervisory Grade-A. During scrutiny it transpired that the said office orders issued by the areas concerned based on misunderstanding and misapprehension and that irregularity

was committed because of the fact that the said office were at variance with the promotion policy/circular dated 20-2-78. It has been further submitted that Sijua Area and Katras Area committed another mistake by promoting the employees concerned to the post of Electrical and Supervisory and Technical Grade A. They submitted that such post was abolished by the Central Wage Board for the Coal Mining Industry as per the recommendation contained in its report and therefore no one could be promoted to such a post specially when the management had no such post existing under them. The management admitted that the office order for promotion issued by Katras and Sijua Area were not in consistence with the promotion policy of the management circulated vide No BCCL/PA/II/78-6241—6320 dated 20-2-78 and since the said circulars are the result of mistakes, irregularities and misapprehension in regard to the policy of the management necessary order has been passed for rectifications of the same. The management further submitted that they have already taken action to rectify the mistakes done by Katras and Sijua Area in the matter of promoting some employees violating the circulars as mentioned above issued by them. Accordingly the management have prayed for passing an Award rejecting the claim of the concerned workmen.

4. The points for consideration in this reference are —

“Whether the promotions made by the management of M/s BCCL, Dhanbad through General Manager Katras Area No IV PM/MP(1-32)6355 dated 16-7-82 and No GM/SA/PM/MP/Office Order/3A/2382 dated 31-5-1983 are consistent with the promotion policy of Messrs BCCL circulated vide No BCCL/PA/II/78-6241—6320 dated 20-2-1978? If so, to what benefits are other seniors to the workmen promoted in the said orders in the same cadre of BCCL entitled and from what date?”

DECISION WITH REASONS

5. It is admitted fact that the concerned workmen when made this reference were posted at Moonidih Project and headquarters under the management. They alleged that the management in utter violation of the promotion policy of M/s BCCL circulated vide No BCCL/PA/II/78/6241—6220 dt 20-2-78 promoted/regularised the services of 9 workmen to Electrical Supervisor in Technical Grade-A vide office order of the Personnel Manager, No MP(A-37)/635 dated 16-7-82 and again promoted/regularised 22 workmen vide office order dated 31-5-83 to the post of Electrical Supervisor in Technical Grade-A. The management after filing WS admitted the existence of the circular in question which has been mentioned above relating to the promotional policy of E & M non-executive cadre. It has been disclosed by the management that channel of promotion for Supervisory Staff in E & M cadre would be according to the said circular. Disclosing this fact the management in their WS admitted that the office order relating to the promotion of 32 staff of E & M non-executive cadre were issued by the Areas concerned due to

misunderstanding and misapprehension and for which an irregularity was committed. The management also admitted that the said office order were at variance with the promotion policy/circular dated 20-2-78. The management also in the W.S. admitted that there was another mistake made by the officials of Sijua and Katras Area and the said mistakes were to promote the employees concerned to the post of Electrical Supervisor in Technical and Supervisory Grade-A. The management submitted that such post was abolished by the Central Wage Board for coal industry as per recommendations contained in its report and therefore no one could have been promoted to such posts specifically when they had no such promotion system. The management also in their W.S. submitted that the promotion order passed by Katras and Sijua Area vide office order dated 16-7-82 and 31-3-83 were not consistent with the promotion policy of the management's circular vide No. BCCL/PA/78-6241—6320 dated 20-2-78 and since these circulars are the result of mistake, irregularities, misapprehension in regard to the policy of the management for necessary rectification action has been taken. It is seen that the management did not consider necessary to adduce any evidence on their part. On the contrary one of the concerned workmen examined himself as WW-1. WW-1 in course of hearing clearly pointed out how they were superseded by the whimsical decision of the management of Katras Area and Sijua Area. From the cross-examination I do not find any material relying on which there is scope to say that WW-1 deposed contrary to the decision taken by the management of Katras and Sijua Area. On the contrary the management admitting their fault submitted in their W.S. categorically that the authority of Katras and Sijua Area committed mistake misconstruing the policy of the management passed those two office orders dt. 16-7-82 and 31-5-83. It is seen from the office order passed by the Katras Area that those workmen were regularised to the post of Electrical Supervisor in Technical Grade-A in the pay scale of Rs. 722—1288 subject to the approval of the D.G.M.S. to work as Electrical Supervisor. Though the services of those workmen were regularised to the post of Electrical Supervisor in Technical Supervisory Grade-A by the Katras Area and Sijua Area the management submitted that there was no such post of Electrical Supervisor either in Technical and Supervisory Grade-A or in any their grade and there was no system of promoting employees to such post or grade with such designation. Therefore, if the office order issued by Katras and Sijua Area and if the submission of the management as per W.S. is taken into consideration it will be seen clearly that the authorities of Katras and Sijua Area actually had no idea in the matter of regularising the services of those workmen in Electrical Supervisory in Technical Grade-A. There is sufficient reason to believe that the authorities of Katras and Sijua Areas were not at all aware of the policy of the management and as such there is reason to believe that they issued the order in question whimsically. The management categorically submitted admitting the mistake that they are taking steps for removing the said mistake. In course of hearing learned Advocate for the concerned workman submitted that till date no such recall order relating to the regularisation of services of those workmen was issued.

Learned Advocate for the management in this regard has failed to give any satisfactory reply.

6. The main grievance of the concerned workmen is that violating the office circular issued by the headquarters of the management in the year 1978 the authorities of Katras and Sijua Areas issued office order regularising the services of some workmen to the post of Electrical Supervisor Grade-A superseding them though they at the relevant time had the requisite qualification to get the said promotion. It has been alleged that the authorities of Sijua and Katras Area illegally and arbitrarily passed the said order and for which the concerned workmen submitted that the said order was not consistent with the promotion policy of M/s. BCCL which was issued on 20-2-78 and for which they are entitled to be treated as Technical Grade-A from the date their juniors were regularised/promoted in Technical Grade-A. It is the specific claim of the management that there was no post of Electrical Supervisor Technical Grade-A and for which regularisation of services of some workmen to the same post could not be considered at all. In spite of claiming so no material is forthcoming before the Tribunal to show that the management directed the authorities of Katras and Sijua Area to withdraw the said office order. Until and unless it is so established there is reason to believe that the office order passed by Katras and Sijua Area dated 16-7-82 and 31-5-83 stands. No evidence is forthcoming before the Tribunal on the part of the management to show that the concerned workmen had no requisite qualification to get their services regularised to the post of Electrical and Supervisory Grade-A. There is also no evidence to show that the concerned workmen are junior to the workmen whose services were regularised in the post of Electrical Supervisor Grade-A vide office order issued by Katras and Sijua Area. Therefore, until and unless this fact is established I find no scope to disbelieve the contention of the concerned workmen relating to their claim. The management also admitted the mistake committed by the authorities of Katras and Sijua Area. Accordingly in view of the facts and circumstances I hold that the services of the concerned workmen are to be regularised to the post of Electrical Supervisory Grade-A from the date their juniors were promoted to the post of Electrical and Supervisory Grade-A if the management by this time did not withdraw the said office order. The concerned workmen simultaneously are also entitled to get difference of wages and other benefits for the said period. In the result, the following Award is rendered :—

"The impugned Promotions Orders dt. 16-7-82 and 31-5-83 in the form of regularisation is not consistent with the promotion policy of M/s. Bharat Coking Coal Limited vide No. BCCL/PA-II/78/6241—6320, dated 20-2-78 and the workmen concerned are entitled to be treated on Technical Grade-A from the date their juniors were regularised/promoted on Technical Grade-A and the workmen concerned are entitled to get difference of wages and other benefits for the said period."

The management is directed to implement the Award within three months from the date of its publication in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2001

का.आ. 3222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.ई.सी.एल. के पब्लिशमेंट के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/थम न्यायालय, जबलपुर के पंचद को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[सं. एल-21011/23/87-डी III (बी)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O. 3222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workmen, which was received by the Central Government on 2-11-2001.

[No. L-21011/23/87-D.III(B)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/244/87

Presiding Officer : Shri K. M. Rai.

The Secretary,
M.P.K.M.S.,
Gevra Project,
PO Gevra, Distt. Bilaspur.

... Workmen's
Representative.

Versus

The Sub Area Manager,
Gevra Project, SECL,
PO Govra, Distt. Bilaspur.

Workmen's

The General Manager,
Korba West Area, SECL.,
Distt. Bilaspur (MP).

M/s. Ex-Military Enterprises (P) Ltd.,
PO Gevra Project,
Distt. Bilaspur.

M/s. Rohini Associates (P) Ltd.,
PO Gevra Project,

Distt. Bilaspur.

M/s. Kaytin Transport (P) Ltd.,
PO Gevra Project,
Distt. Bilaspur.

Management.

AWARD

Passed on this 30th day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-21011/23/87-D.III(B) dated 20th November, 1987 has referred the following dispute for adjudication by this tribunal :—

“Whether the demand of the Madhya Pradesh Koyla Mazdoor Sangh, Gevra to treat the workers engaged through M/s. Ex-Military Enterprises Pvt. Ltd., M/s. Rohini Associates Pvt. Ltd. and M/s. Kaytin Transport Pvt. Ltd., coal transport contractors (who are reportedly not holding valid licence under the Contract Labour Regulation and Abolition Act, 1970 as the direct employees of the Principal Employer i.e. M/s. SECL, Gevra Project is justified? If yes, what relief the workmen concerned are entitled to?”

2. The case for the Union is that the Gevra Project is run by SECL. The transportation of coal from mines to coal despatch and coal handling plant had been given on contract to M/s. Ex-Military Enterprises (P) Ltd., M/s. Rohini Associates Pvt. Ltd. and M/s. Kaytin Transport Pvt. Ltd. The workers of the contractor had been doing the job of a prohibited category in which the workmen of permanent nature were engaged for same and similar work at same place. The contractors did not obtain the licence from the Labour Commissioner for the purpose of employment of the contract labour according to the provisions of Contract Labour Regulation and Abolition Act, 1970 (for short CLRA Act, 1970). In this way the contractors violated the mandatory provisions of CLRA Act, 1970 by employing the contract labour without obtaining the valid licence. They obtained licence for the year 1987-88 after the Union had served a strike notice on them on 20-5-87. The principal employer SECL also did not obtain any valid licence to employ contractors according to the provisions of CLRA Act, 1970. The workers working with the contractors were the real employee of SECL in view of nature of work, past service and supervision of the management. The management of SECL had the full control over the working of the contract workers. The attendance of the contract workers was taken by the principal employer SECL and Form B Register was also maintained by them. Likewise the principal employer was maintaining the leave register of the contract workers. In view of all these facts, the real employer of the contract workers is SECL and therefore the relationship of master and servant exists between them.

3. The Union further alleges that the services of several contract workers were terminated after the present dispute was raised before the competent authority without assigning any reason. The violation of mandatory provisions of CLRA Act, 1970 automatically creates the relationship of master and servant

between the Principal employer, SECL and the contract workers. They are therefore entitled to regularisation.

4. Another contention of the Union is that the contract of transportation of coal from mines awarded to the contractors was nothing but a Sham contract which had no force in the eye of law. The said contract was not given to the Ex-Servicemen with a view to rehabilitate them as per the scheme jointly sponsored by the Ministry of Energy and Defence, Government of India, New Delhi. No Ex-Servicemen was ever rehabilitated in such scheme. At the same time no such scheme was ever implemented. The contract in question was not in accordance with the scheme formulated by the Government of India to rehabilitate the ex-servicemen as no legal formalities were observed in this respect. The contract workers were not paid the wages as per the recommendation of National Wage Board. They were paid less than the minimum prescribed wages. In view of all these facts, the workers engaged through the said three contractors were the direct employees of the Principal employer SECL and therefore they were entitled to regularisation and other monetary benefits.

5. The case for the management is that the Director General Resettlement, Ministry of Defence, Government of India is responsible to give adequate employment opportunities to Ex-Servicemen who retired or were discharged from the Armed Forces. In this respect, the Director General has been sponsoring various scheme for rehabilitation of Ex-Servicemen by forming companies etc. With a view to implement this scheme, the Government of India is encouraging public sector undertakings to give contract work to such contractors who are sponsored by Director General, Resettlement, Ministry of Defence. In the present case with a view to provide rehabilitation facilities under the said scheme the management of SECL had given transport contract to 3 contractors namely Ex-Military Enterprises Pvt. Ltd., M/s. Rohini Associates Pvt. Ltd. and M/s. Kaytin Transport Pvt. Ltd. These contractors were given the contract for transporting coal from the coal mines of Gevra Project in the relevant year.

6. The management further alleges that the afore-said 3 contractors employed contract labour for the purpose of transportation of coal from coal mines of Gevra Project to CWP. The contractors had obtained the valid licence from the Labour Commissioner on 22-5-87 for engaging contract labour for transporting the coal from coal mines of Gevra Project as per the terms and conditions of contract. The management had also obtained the valid licence under the provisions of CLRA Act, 1970. The contract workers were not doing prohibited category of job in the coal mines. During the course of discussion on 12-7-87, the representative of the Union Shri Murit Ram Sahu, General Secretary, HMS, Korba had admitted that their representative had verified the licences produced by the management and the contractors and they had agreed not to raise any further dispute in this respect. The workers engaged by the 3 contractors were never the direct employee of SECL. No relationship of master and servant exists between the contract workers and the management of SECL. It is wrong to say

that the contractors are more agents of the employees of SECL. The proper wages were paid to the contract workers by the contractors and the management had verified the same according to the mandatory provisions of CLRA Act, 1970. Merely the violation of mandatory provisions of CLRA Act by the contractors shall not create any relationship of master and servant between the contract labours and SECL. In such a case the contract workers cannot be automatically absorbed as the direct employees by the SECL. If the contractors of Principal employer commit the breach of the mandatory provisions of CLRA Act, 1970 then they shall be liable to the prosecution under the provisions of the said Act. The contract of transportation of coal given to the contractors was a real and valid document and according to the terms and conditions of the contract, the contractors were performing their job. It is wrong to say that it was an illegal contract.

7. The further contention of the management is that the contract workers were engaged for transporting the coal only. They were not engaged in the mines for the purposes of mining operations. The management of SECL had neither supervised the work of contract labours nor they had any control over them. The Union has not filed any genuine document to show as to who were the workers employed by the contractors. Their full particulars and attendance etc. have not been furnished by the Union. The SECL never took the attendance of the contract workers as alleged by the Union, the contractors were responsible for taking the attendance of the contract workers and for paying their wages. The contractors used to bring their trucks into the quarry where coal was loaded mechanically and then transported to the respective destinations. The drivers and workers etc. were employed by the contractors themselves. The entire facts and circumstances of the case do not establish the relationship of master and servant between the Principal employer SECL and contract workers in the present case as alleged by the Union. The workers are therefore not entitled to be declared as direct employees of SECL. They are not entitled to any relief as claimed by them.

8. The following issues arise for decision in this case and my findings thereon are noted hereinafter—

1. Whether the workers employed through the coal transport contractors M/s. Ex-Military Enterprises Pvt. Ltd., M/s. Rohini Associates Pvt. Ltd. and M/s. Kaytin Transport Pvt. Ltd. engaged for transporting the coal from coal mines of Gevra Project, SECL are the employees of the Principal employer SECL.
2. Whether the workers in question are entitled to regularisation with all monetary and other consequential benefits?
3. Relief and costs?

9. Issue No. 1 : The controversy regarding the status of the contract workers has been finally settled by the Supreme Court in 2001 SOL. Case No. 517-Steel Authority of India Ltd. versus National Union Water Front Workers and others. The Supreme Court

has held in para 116 (sub paras 3, 4, 5 and 6) of the judgement as under :—

- “3. Neither Section 10 of the CLRA Act nor any other provisions in the Act whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-section (1) or Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.
4. We over rule the judgement of this court in AIR India's case prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court for absorption of contract labour following the judgement of in Air India's case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgement in houses where such a direction has been given effect to and it has become final?
5. On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
6. If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately

taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

10. The aforesaid principle laid down by the SC in the recent judgement clearly goes to show that the provisions of Section 10 of the CLRA Act, 1970 nor any other provision of the Act provide for automatic absorption of contract labour on issuing a notification by appropriate Government under Section 1 prohibiting employment of contract labours in any process operation or other work in any establishment, consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment. This principle indicates that the contract workers who are employed through contractors and were doing the prohibited category of job in the mine shall not be entitled to claim automatic absorption as a regular employee of SECL. This judgement therefore nullifies the argument of the Union regarding automatic absorption of the contract workers as regular employees of the SECL on the ground that they were working the prohibited category of job in the coal mines of Govra Project. They shall always be deemed to be the employee of the contractors only.

11. The representative of the Union during the course of argument, had laid much emphasis on the point that the principal employer and the contractors had no valid licence under the provisions of CLRA Act, 1970 and therefore the contract workers shall be deemed to the employees of the principal employer i.e. SECL. This argument of the Union has no substance in the eye of law as laid down by the Supreme Court in para 98 of the aforesaid case as under.—

“The principle that the beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature had not provided whether expressly or by necessary implication or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorises in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section 2 of Section 10. Admittedly when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act it is not for the High Courts or this court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or

a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held above on consideration of various aspects that it is difficult to accept that the Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of the CLRA Act."

12. The aforesaid principle laid by the SC establishes this fact that the violations of the mandatory provisions of CLRA Act, 1970 in not obtaining the valid licence from the competent authority by the contractors for employing contract workers to do some work in the mines of SECL as per terms and conditions of the contract shall not create the relationship of master and servant between the principal employer and the contract workers. In the same way, if the principal employer violates the mandatory provisions of CLRA Act, 1970 by not obtaining the licence for employing contractors to do some work through the contract labour shall not automatically create the relationship of master and servant. In such case, the principal employer and contractors are liable for prosecution before a proper forum. Merely the violation of legal provisions shall not create the relationship of master and servant between SECL and the contract workers of Govra Coal Mine Project in the present case. The argument of the Union in this connection is absolutely meaningless and without any substance.

13. Another important aspect in this case has to be examined is to see whether the contract for transporting coal from coal mines of Govra coal mine project is genuine or sham contract.

14. It has been submitted by the management that the contract for transporting coal from coal mines of Govra Project was given to the 3 transport companies controlled by Ex. Servicemen as per the policy of the Government of India with a view to rehabilitate the Ex Servicemen. This policy decision was taken on 14-7-81 as per Annexure M-1. It lays down certain guidelines for awarding transport contracts to the companies which are run by ex-servicemen. In view of the policy of the Government of India and the guidelines given for the purpose the transport contract were awarded by the management to the contractors under reference. The 3 agreements of the contract M-2, M-3 and M-4 were executed for transporting coal from Govra coal mines Project for a period of 5 years, the agreement with M/s Kaytin Transport enterprises was for a period from 1-3-83 to 29-2-88, with Ex-Military enterprises Pvt. Ltd from 10-2-84 to 9-2-89 and for Rohini Associates Pvt. Ltd from 5-2-86 to 4-6-91. These transport contractors were required to

transport specified quantities of coal upto a distance of 5 kms from quarry face to the Railway siding and Coal Mandling Plant. The rates of transportation were fixed as per metric tonnes. The payment of transportation charges was made as per terms and conditions of the agreement.

15. From the perusal of the agreements M-2, M-3 and M-4, it appears that the entire terms and conditions of the transport contract were incorporated and according to them, the contractors were carrying on the work of transportation of coal from mines. Some statutory provisions were also incorporated in the terms and conditions of the contract. It appears that these statutory provisions were incorporated in the terms and conditions of the contract. With a view to benefit the workers, these statutory provisions were incorporated in the agreement with a view to ensure the contract workers that their rights in all respect shall be protected and the contractors will be duty bound to extend all benefits available to them according to law. The incorporation of the statutory provisions in the agreements shall not in any manner viciate their validity. On the contrary the genuineness of the contract has got the legal strength in establishing their validity by these stipulations in the agreement.

16. The Union's representative vehemently argued that the agreement or contracts in question were sham documents. In this connection, they had not been able to show as to how these documents are ingenious and their validity is impeachable. By merely saying that the Principal Employer had the actual control over the contract workers and they were maintaining the attendance etc. of the workers will not in any manner help to substantiate this contention of the union. In this respect the statement of Union's witnesses Vinodhya Singh, Ram Kumar Verma and Bhagirat Yadav is relevant in establishing the relationship of master and servant between the principal employer and the contract workers as well as the genuineness of the agreements of contracts for transportation of coal. These witnesses have clearly stated in their statements that they were employed by the contractors under reference and their attendance was recorded by them. The wages were paid to them by the contractors and not by the management of SECL. They have also testified that the leave was granted to them by the contractors and their services

too were terminated by them. This specific statement of these witnesses amply goes to prove that the contractors had the full control over their employment and performance as contract workers. The liability for payment of their wages rested on the contractors themselves and not on the principal employer SECL. The sole statutory obligation on SECL was to verify the payment of wages to contract workers in the presence of their representative. Except this no other liability rested on them. The oral evidence adduced by the Union also goes to show that there was no relationship of master and servant between the management of SECL and the contract workers. The contract for transportation of coal was perfectly genuine and it was acted upon by both the parties. In view of all these facts, I do not find any cogent reasons to hold that the contract for transportation of coal was a sham contract. The valid agreement of contract also clearly prove that there was no relationship of employer and employee between the contract workers and SECL.

17. During the course of argument, much emphasis was laid by the Union on the fact that the management and the contractors had never obtained valid licence according to the provisions of CLRA Act, 1970. It was admitted by the parties that 3 contractors obtained licence under Sec 13 of the CLRA Act, 1970 on 22-7-87, during the pendency of conciliation proceedings of the dispute in question. The management had obtained the registration on 26-11-86. The registration certificate was amended on 7-12-87 by including the name of the contractor in the prescribed proforma. This amendment was done after the reference of the present dispute. In this connection, it has already been discussed earlier that the violation of the provisions of CLRA Act, 1970 by not obtaining the licence by the Principal employer and the contractors will not create any relationship of master and servant between SECL and the contract workers as held by SC in the latest judgment quoted earlier. The principal employer and the contractors are liable for prosecution only in the case of violating the mandatory provisions of CLRA Act, 1970. Except this, no other consequence will follow.

18. In the light of foregoing discussions, it is held that the workers engaged through the Transport contractors M/s. Ex Military Enterprises Pvt. Ltd., M/s. Rohini Associates Pvt. Ltd., and M/s. Kaytin Transport Pvt. Ltd.

for transporting coal from coal mines of Gevra Project, SECL shall not be deemed to be employee of SECL. They are held to be the employee of contractors only. No relationship of master and servant exists between the principal employer SECL and the workers employed through the said 3 contractors for transporting coal from coal mines of Gevra Project. These contractors obtained valid licence during the course of conciliation proceedings and this fact is not going to create any relationship of master and servant between the SECL and the contract workers. Issue No. 1 is answered accordingly.

19. Issue No. 2.—In the light of my findings and reasons given on Issue No. 1, the contract workers in question are not entitled to the regularisation and monetary benefits as claimed by the Union. Issue No. 2 is answered accordingly.

20. The management during the course of argument pointed out certain facts which saw the light after the present dispute was referred to this tribunal for adjudication vide order dated 20/26-11-87. Prior to reference of the dispute the writ petition No. MP No. 3548/87 was filed in the High Court of MP at Jabalpur by the Union on the issue of payment of equal wages to the contract workers employed by the SECL. The High Court referred the matter to the Chief Labour Commissioner (C) New Delhi for settling the issue. During the course of proceeding the Union and the representative of the management agreed for referring dispute to arbitrator for passing award in the dispute. The said Shri R. K. Mehta of SECL was appointed arbitrator to settle the dispute submitted for arbitration award on 29-8-88. This arbitration award has been filed in this case. The arbitrator specifically held in the award that no relationship of master and servant existed between the SECL and the contract workers and therefore the management of SECL was not at all responsible to make the payment of arrears of wages to these workers. He further held that the persons employed by the contractors as per the list submitted by the Union are entitled wages as per NCWA. The contractors are liable to pay this amount to the workers. The management of SECL is entitled to make the amount paid by the recovery from the bills of the contractors for making the difference of payment to such of the contract workers for the period they have worked with the said contractors. This award has been challenged by SECL be-

fore the High Court of MP by WP No. 2626/1996. The High Court ordered the payment of 50 per cent of the awarded amount to the workers and the rest amount was ordered to be deposited with the RLC(C) Jabalpur. This order was also challenged before the SC by the management. The SC confirmed the order of High Court and laid down the procedure for making the payment to the contract workers. In view of this order, the payment has been made to the workers as an interim relief. The original petition has not been finally disposed off by the High Court of MP.

21. It appears that the fact of reference of the present dispute was never brought to the notice of the superior court. However the matter regarding the validity of arbitration award is pending before the High Court and therefore it will not be appropriate for this tribunal to make any comment in respect to the said award. During the course of argument it was pointed out by the management that the photocopy of the award filed before this tribunal does not bear the sentence "List of workman employed by the said contractors is at annexures A, B. and C." This sentence appears to have been added in the last para of the award, copy of which M-8 was filed before the SC. This addition is below the last sentence. In the original award, the said sentence does not find place at all. In this respect, I would not like to add anything more as the matter is subjudice before the High Court.

22. During the course of argument the management further submitted that the identity of workers and their numbers, about whom the present dispute has been referred for adjudication, had not been established by the union. The management's contention is that the Union had taken varying stand with regard to the number of workers employed by the contractors in several proceedings before different forum as under :—

1. Assistant Labour Commissioner (C) During conciliation proceedings. 114
2. Before Chief Labour Commissioner (C) (Proceedings for determination whether the workmen were doing the same and similar nature of work as employed by the principal employer). 134

3. Before the CGIT, Jabalpur (instant case). 153

4. Before the Arbitrator (Shri R. K. Mehta). 160

The Union has not been able to clarify its position in this respect. I have already observed that the contract workers, whatever their number might be, shall not be treated as employee of the Principal employer, SECL. In view of this matter, I do not think it proper to discuss the genuineness of the number of contract workers submitted by the union during different proceedings pending before different forum.

23. Issue No. 3.—On the reasons stated above, it is held that the relationship of employer and employee does not exist between the SECL and the contract workers employed by the transport contractors for transporting coal from the coal mines as per terms and conditions of the contract. All the 3 contracts of coal transport are genuine, these contract workers shall not be deemed to be an employee of the Principal Employer SECL. These workers shall not be entitled to regularisation and monetary benefits as claimed by them. The reference is accordingly answered in favour of the management and against the Union.

24. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2001

का.प्र. 3223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. ई. सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[सं. एल-22012/42/97-प्रार्थी श्रम (सी-II)]

एन पी केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O. 3223.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 2-11-2001.

[No. L-22012/42/97-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

New Delhi, the 5th November, 2001

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR
COURT, JABALPUR

Case No. CGIT/LC/R/85/98

Presiding Officer : Shri K. M. Rai,

Shri V. K. Khare,
Through Rashtriya Kowli Khadan
Mazdoor Sangh,
Branch SECL,
Seepat Road,
Bilaspur.

.... Applicant

Versus

The General Manager,
South Eastern Coalfields Limited,
Headquarters,
Sripat Road,
Bilaspur.

.. Non-applicant

AWARD

Passed on this 16th day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-22012/42/97 IPC. II dated 24-4-98 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of SECL Bilaspur in not selecting/promoting Shri V. K. Khare clerk spl Grade SECL Bilaspur to the post of Liaison Supdt. (T & S Grade-A) is justified? If not, to what relief the workman is entitled?”

2. The workman appeared before the tribunal and stated that No dispute regarding his promotion exists any more. He prayed to pass No Dispute Award in this case. On his prayer, No Dispute Award is passed.

3. In view of the above said facts, it is held that no dispute exists between the parties. The workman has already been promoted by the management. No Dispute Award is therefore passed.

4. Copy of the award be sent to the Ministry of Labour Government of India as per rules.

K. M. RAI Presiding Officer

16-10-2001

नई दिल्ली, 5 नवम्बर, 2001

काया 3224—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार एम ई सी एल के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अतिक्रमण/भ्रम न्यायालय जवाहर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[सं एन-22012/51/96-आई आर (सी-II)]

एन पी केशवन, डेस्क अधिकारी

S.O. 3224.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 2nd November, 2001.

[No. L-22012/51/96-IR(C-II)]

N. P. KESAVAN, Desk Officer
ANNEXUREBEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR
COURT, JABALPUR

Case No. CGIT/LC/R/93/97

Presiding Officer : Shri K. M. Rai

Shri Ramchandra, S/o Terasram
Ex-Choukidar Subhash Mune,
Sohagpur Area, SECL rep. by
General Secretary, Koyla Mazdoor Sabha
Post Dhanpuri
Distt Shahdol.

.. Applicant.

Versus

Sub Area Manager Budhar,
Sub Area SECL Sohagpur Area
Post Dhanpuri,
Distt. Shahdol.

.. Non-applicant.

AWARD

Passed on this 5th day of March, 2001

1. The Government of India, Ministry of Labour vide order No. L-22012/51/96-IR(C-II) dated 14-3-97 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of Burhar Group of Mines in dismissing Shri Ramchandra Chowkidar, Subhash Mines from services w.e.f. 7-5-95 is legal and justified? If not, to what relief the workman is entitled?”

2. The case for the workman is that originally he was appointed as loader by the management. On 27-6-94 he met with an accident and therefore a light duty of chowkidar was assigned to him on 2-12-94. He was never trained for the post of chowkidar nor any weapon for safety was provided to him by the management. The management falsely chargesheeted him for the theft of one box of belnex barood at 11 PM on 2-12-94 during his duty hours. Being an injured person he should not have been assigned the duty of chowkidar by the management. The enquiry was conducted illegally in utter disregard of the natural justice. No report of alleged theft of explosive was made by the management. The store clerk should have been held responsible for the shortage of explosive. On this false charge the workman was illegally removed from service by the management. He was

never negligent in his duty. The order of punishment is absolutely illegal and deserves to be quashed. Looking to his disability he deserves to be reinstated with back wages and other consequential benefits.

3. The case for the management is that on 27-6-94, the workman met with an accident resulting into a grievous injury on his thumb finger. Due to this fact he was given light duty of chowkidar. No training is required for the duty of chowkidar. During the duty hours of workman the explosive was illegally removed from the magazine. In this way the workman was negligent to his duty which resulted in the theft of the explosive in the magazine. The chargesheet of misconduct was served on him and the proper departmental enquiry was conducted. He was given ample opportunity to defend himself. The charges were found proved against him and therefore he was removed from service on the basis of enquiry report. The punishment awarded to him was just and proper and therefore does not require any interference. The workman is not entitled to any relief as claimed by him.

4. The following issues arise for determination in this case:

1. Whether the Departmental Enquiry conducted against the workman by the management is just and proper?
2. Whether the management is entitled to lead evidence to prove misconduct of the workman?
3. Whether the punishment awarded to workman is just and proper?
4. Whether the workman is entitled to reinstatement with back wages?
5. Relief and costs?

1. Issue No. 1 & 2.—It has been held on 19-7-94 by this tribunal that the departmental enquiry conducted against the workman by the management is just and proper. In view of this findings, these issues need no further consideration at all. The management is not required to lead any evidence to prove the misconduct of the workman. Both these issues are answered accordingly.

6. Issue No. 3 & 4 :—The workman was given a chargesheet by the management for dereliction to the duty as a theft of one box explosive was committed at the time of his duty hours. The workman was negligent in his duty and therefore the explosive boxes were kept out of the magazine though there was sufficient space to keep the explosive inside the magazine. The workman never raised any alarm in the night which the theft of one box explosive was committed. He also did not make any effort to apprehend the thieves. For this misconduct, he was removed from service. Now we have to see as to whether the punishment awarded against the workman is just and proper in the circumstances of the case? Admittedly the workman had met with a serious accident resulting in the amputation of his thumb finger of right hand. True to this fact, he was given light duty of chowkidar. During the course of his employment, no report of such misconduct was ever lodged against him by the manage-

ment. During the course of employment, he had become disabled also. He himself did not commit the theft of one box explosive nor he gained any benefit out of the illegal removal of the explosive by some miscreants. Looking to these circumstances, the punishment of dismissal from service appears to be too harsh. In such a circumstance, the lesser punishment shall meet the ends of justice. I, therefore set aside the punishment of dismissal from service. The period of his ouster from service shall be treated as Leave Without Pay and for this period, he shall not be entitled to any payment of wages. The workman shall be entitled to reinstatement only. Issue Nos. 3 & 4 are answered accordingly.

7. Issue No. 5.—On the reasons stated above, it is hereby ordered that the workman shall be reinstated within a period of 3 months from the date of award. The workman shall not be entitled to back wages for the period of his ouster from service till the date of reinstatement. The period of his ouster from service shall be treated as continuity in service only for the purposes of pensionary benefits. The workman shall be paid the wage for the period he is entitled as per rules. The reference is accordingly answered in favour of the workman and against the management.

8. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2001

का.अ. 3225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एच. के प्रवर्तन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अतिक्रमण/अमान्य व्यवहार के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[य. एन-22012/300/91-आई आर (सी-II)]

एन पी केशवान, डेस्क ऑफिसरी

New Delhi, the 5th November, 2001

S.O. 3225.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 2-11-2001.

[No. L-22012/300/91-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/1992

Presiding Officer : Shri K. M. Rai,
Smt. Bhagwati Bai,
through General Secretary,

SKMS (AITUC),
PO Chandametta,
Distt. Chhindwara.

..... Applicant

Versus

The Manager,
Chandametta Colliery,
PO Chandametta,
Distt. Chhindwara.

..... Non-applicant

AWARD

Passed on this 10th day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-22012/300,91-IRC.II dated 9-1-92 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management i.e. Manager, Chandametta colliery of WCL, Pench Area PO Chandametta, Distt. Chhindwara (MP) to stop from work to Smt. Bhatwati Bai, D/o Gindu Ex Wagon Loader of Chandametta colliery w.e.f. 6-1-74 is proper and justified? If not, to what relief are the said workman is entitled to?”

2. Neither the proper representative of the Union nor the workman appeared before this court to prove the claim as referred by the Government of India. The court therefore proceeded ex parte against the workman on 22-4-99. No evidence has been led by the Union/ workman to prove the claim in this case. It was the duty of the workman to prove her case by adducing proper evidence. She has failed to prove the same. The Union has also not acted bonafide in this case to prove the claim of the workman.

3. On the reasons stated above it is held that No Dispute Exists between the parties. Hence No dispute Award is passed.

4 Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2001

का.प्र. 3226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कार्मिकों के बीच, अर्थात् में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय जयपुर के पंचाट को प्रेषित करने है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[नं. एन-22012/476/98-आई आर (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O. 3226.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jaipur

as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 2-11-2001.

[No. L-22012/476/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

अ.प्र.

केन्द्रीय सरकार औद्योगिक अधिकरण एवं

अथ न्यायालय, जयपुर

प्रकरण नम्बर : सी.आई.टी./जे-45/99

आदेश नम्बर : एन-22012/176/98/आई.आर

(सी.एन-11) दिनांक 30-7-99

केदार सीता पुत्र श्री मोहन लाल सीता,

मार्फत : श्री नवीन सदनगर, 18 अर्जुनपुरी, इमलीवाला फाटक,

मिडिया मार्ग के पास, जयपुर-5

—प्रार्थी

विरुद्ध

1 फूड कारपोरेशन आफ इंडिया,

जॉय मेनजर/ओबोय प्रबंधक,

फूड कारपोरेशन आफ इंडिया,

डो-39, नु+ 11 मार्ग, सी-स्क्रीन, जयपुर।

2 निता सनगर, फूड कारपोरेशन आफ इंडिया,

मनोर नगर, सीमांत मज, पट्टी (11 मार्ग)

3. वेनर डिपो,

फूड कारपोरेशन आफ इंडिया, जयपुर

कार्मिक नुमाई मायोनार (गजस्थान) —अप्रार्थी/अथ

उपस्थित :

प्रार्थी की ओर से कोई नहीं

अप्रार्थी की ओर से कोई नहीं

चाट दिनांक 15-10-2001

पचाट

केन्द्रीय सरकार के द्वारा निम्न औद्योगिक विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिस वाद में अधिनियम, 1947 कहा गया है) की धारा 10 की उपधारा (1) के खंड-डी व उपधारा 2-ए के अंतर्गत व्यापनियमा हेतु इस अधिनियम को निर्दिष्ट किया गया :—

“Whether the action of the Food Corporation of India management in not regularizing the workman Sh. Kedar Meena was appropriate, whereas workers who has put less number of days service were given permanent appointment? If not, to what relief is the workman entitled to?”

प्रार्थी की ओर से स्टेटमेंट आफ क्लेम प्रस्तुत किया गया गया जिसका जवाब विपक्षी की ओर से प्रस्तुत किया गया। दोनों पक्षों के बीच आने के कारण दिनांक 2-8-2000 को विवाद रहित पचाट पारित किया गया। तत्पश्चात् प्रार्थी के आवेदन पर आदेश दिनांक 2-7-2001 द्वारा उक्त पचाट दिनांक 2-8-2001 को निरस्त किया

गया व प्रकरण को पुनः दर्ज किया गया तथा कार्यवाई प्रारम्भ की गयी। दिनांक 25-9-2001 को प्रार्थी की साक्ष्य हेतु पक्षावली नियत की गयी। उस दिन न तो प्रार्थी अथवा उसका प्रातनिधि उपस्थित आया व न कोई साक्ष्य प्रस्तुत की गया। अप्रार्थी की ओर न भी कोई नहीं आया। ऐसी परिस्थितियों में यह प्रतीत होता है कि प्रार्थी को क्लेम में कोई खर्च नहीं है। अतः, विवाद रहित पंचाट पारित किया जाता है।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम 1947 की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

ह./-अपठनीय
पीठासीन अधिकारी

नई दिल्ली, 5 नवम्बर, 2001

का.आ. 3227—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.सी.सी.एल. के प्रबंधन के संबंध निर्यातों और उनके कर्मचारियों के बीच, अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/थम न्यायालय गोदावरोखानो के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[म. एन-22025/25/2001 आई आर(सा-II)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O. 3227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court Godavarikhani as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 2-11-2001.

[No. L-22025/25/2001-JR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL : CUM : LABOUR COURT,
GODAVARIKHANI

PRESENT :

Sri P. Gurunadha Rao, B.Sc., B.L.,
Chairman-cum-Presiding Officer,
Tuesday, the 9th day of October, 2001
Industrial Dispute No. 136 of 2000

BETWEEN

Yatakuri Venkaty, S o Ankaiah,
45 years, Occ : Ex-Timberman,
Somagudem No. 3 Incline, Tenugupalli Vill. and
Post, Bheemini Mandal, Dist. Adilabad.

—Petitioner.

AND

The General Manager,
Singareni Collieries Co. Ltd.,
Mandamarri, Distt. Adilabad.

—Respondent

This petition coming before me for final hearing in the presence of Sri C. S. N. Reddy, Advocate for the respondent, but petitioner and his Advocate are absent and having stood over for consideration till this date, the court passed the following :-

AWARD

1. This is a petition filed U/s. 2-A(2) of the Industrial Disputes Act, 1947, as amended by A.P., Amendment Act, 1987.

Facts of the case briefly are as follows :—

The petitioner was working as Timberman. Chargesheet was issued on 14-8-96 alleging that the petitioner had put-up 28 musters only in the year, 1995 and he was absent for the remaining days without sanctioned leave or sufficient cause. Charge-sheet was returned unserved. It was published in a daily newspaper. The petitioner remained exparte in the enquiry.

The enquiry officer came to the conclusion that the charge against the petitioner was proved.

Enquiry report was given to the petitioner under acknowledgement calling for his comments. But the petitioner had not offered his comments or remarks against the enquiry report. The petitioner was dismissed from the service w.e.f., 27-5-97.

The present petition was filed on 4-10-2000

2. Respondent filed counter.

3. Petitioner and his Advocate are absent.
Ex. M-1 to Ex. M-9 are marked.

Heard respondent.

4. The point for consideration is whether the charge against the petitioner is proved, if so, whether the punishment of dismissal of the petitioner from the service is in proportion to the charge?

5. POINT :—The petitioner remained exparte in the enquiry. The petitioner did not give his explanation to the charge-sheet. The petitioner received the enquiry report, but not offered his comments or remarks against the enquiry report.

6. The petitioner had put-up only 28 musters in the year, 1995 and he was absent for the remaining days without sanctioned leave or sufficient case. Even-after issuing the charge-sheet, the petitioner was absent from duties. He was not suspended from duties. The petitioner continued to be absent till he was dismissed from the service w.e.f. 27-5-97. The petitioner kept quiet for more than three years after his dismissal and filed the present petition on 4-10-2000.

I consider that the charge against the petitioner is proved and the punishment of dismissal of the petitioner from the service is in proportion to the charge. Hence, I answer the point accordingly.

In the result, this petition is dismissed. The order of dismissal of the petitioner from the service is confirmed. Each party do bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court on this, the 9th day of October, 2001,

P. GURUNADHA RAO, Chairman-cum-Presiding Officer

Appendix of Evidence
Witnesses-examined

For workman :— For Management :—
—Nil— —Nil—

Exhibits

For workman :—
—Nil—

For Management :—

Ex. M-1 dt. 14-8-96—Charge-sheet No. SMG-3/CS/57/96/47.

Ex. M-2 dt. 24-8-96—Undelivered cover.

Ex. M-3 dt. 9-10-96—News-paper dt. 9-10-96 in which charge-sheet-cum-enquiry notice was published.

Ex. M-4 dt. 25-10-96—Enquiry proceedings

Ex. M-5 dt. 20-12-96—Enquiry report.

Ex. M-6 dt. 29-12-96—Lt. No. SMG-3/WO case file/96/14.

Ex. M-7 dt. 12-3-97—Show-cause notice No. P/MM/7/2/97/769.

Ex. M-8 dt.—Acknowledgement

Ex. M-9 dt. 27-5-97—Dismissal order No. P/MM/7/2/97/1463.

नई दिल्ली, 5 नवम्बर, 2001

का.आ. 3228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का. 11) की धारा 17 के अन्वय में, केन्द्रीय सरकार एफ.सी.आई. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धर्म व्यवहार मूम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-11-2001 को प्राप्त हुआ था।

[सं. एल-22012/78/99-आई आर (सी-2)]
एन पी. केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2001

S.O. 3228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the

Central Government Industrial Tribunal/Labour Court Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 2-11-2001.

[No. L-22012/78/99-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/156 of 1999

Employers in Relation to the Management of

Food Corporation of India

The Zonal Manager (W),
Food Corporation of India,
Zonal Office, Mistry Bhavan,
Mumbai-20.

AND

Their Workman
The Zonal Secretary (W),
F.C.I. Employees Association,
Room No. 9, 4th Floor,
Mistry Bhavan,
Mumbai-20.

APPEARANCES :

For the Employer : Mr. V. Narayanan, Advocate.

For the Workmen : Mr. M. B. Anchan, Advocate.

Mumbai, dated 26th September, 2001

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012/78/99/IR (CM-II), dated 30-7-99/3-8-99, have referred the following Industrial Dispute to this tribunal for adjudication in exercise of the powers conferred on it by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the action of the management of Food Corporation of India, Mumbai cancelling the order of encashment of L.T.C. (Bharat Darshan) in case of sixteen employees (List enclosed) is justified? If not, to what relief these workmen are entitled?”

List of Workmen Involved in the Dispute :

1. Sh. S. M. Kamble.
2. Sh. V. R. Mahamankar.
3. Sh. M. S. Satamkar
4. Sh. V. Subramanian
5. Smt. S. N. Nilwanna.
6. Smt. P. P. Vernekar.

7. Sh. R. P. Mahilant.
8. Sh. B. G. Acharekar.
9. Sh. B. Mohana.
10. Smt. A. R. Pawar.
11. Ms. M. V. Shejwadkar.
12. Sh. S. R. Bagkar.
13. Sh. A. P. Lad.
14. Sh. D. N. Garid.
15. Smt. A. C. Sequia.
16. Smt. K. U. Rane.

2. The above said persons are employees of the F.C.I. It is contended F.C.I. employees are allowed to avail the facility of Bharat Darshan (LTC) for the block years of four years and if the employees could not avail the same within four years they can avail the same in the following calendar months when practice has been followed on the same principle by the Government of India. It is contended, benefit of encashment of leave travel to the F.C.I. employees was extended as per Memorandum of Understanding dated 14-1-89 and that F.C.I.'s Head Quarters, New Delhi vide its circular No. 4 of 1989 dated 25-4-89 speak on extension of these facilities to category III & IV employees and as per these instructions employees who have submitted written undertaking/letter of option can avail such encashment of LTC for the block year for which LTC (Bharat Darshan) is admissible to them. It is contended the above said employees applied for encashment of LTC (Bharat Darshan) during the grace period of one year of the block year 1990-93 i.e. in the year 1994 and the same was sanctioned and paid by the Zonal Manager (W) and the amount was paid was accounted for calculation of income tax for the financial year 1-4-94 to 3-3-95, and that income tax on the said amount was recovered from the salary of the employees. It is contended the Zonal Manager (W), FCI, Mumbai vide office order dated 5-6-95 advised the Dy. Manager (Finance) of Zonal Office (W) to recover the amount paid towards encashment of LTC from the salary of the employees in five instalments, and that recovery was started from salary of June '95 onwards. It is contended the Employees Association requested the management and thereafter to the R.L.C. (C), Mumbai and on the intervention by the R.L.C. by his letter dated 20-6-95, the recovery was not effected. It is contended if these employees were not entitled for encashment of L.T.C. during extended period of 1994 the F.C.I. management should not have sanctioned and paid the encashment of L.T.C. and therefore contended that the employees be not put to hardship and consequently prayed to direct the management not to recover the paid amount.

3. The F.C.I. opposed the claim of the employees by filing Written Statement (Exhibit-7). It is contended that the instructions in Circular No. 4 of 1989 dated 25-4-89 does not speak about the grace period. In order to ensure that each and every employee even at field level may be able to get reimbursement up to 31-12-90 was considered and accordingly the employees were allowed reimbursement and took the H.Q.'s permission for such action during the grace period for the block of 1986-89. The claims of reimbursement for the block of 1990-93 during the

grace period i.e. up to 1994 the management allowed their claims. However, clarification was sought from the H.Q.'s that in Circular No. 44/94 it is specifically pointed out that the employees who have not availed the concession of Bharat Darshan for the block of 1990—93 i.e. upto 31-12-93 are not entitled for encashment of L.T.C. Action was taken of recovery from the employees who have availed the said facility during the grace period of block 1990—93. It is contended employees herein referred to above have full opportunity to get reimbursement in the block of four years between 1-1-90 to 31-12-93 and that they cannot claim as of a right, reimbursement and encashment of L.T.C. in the extended period. It is contended that the above employees are not entitled to claim as of right the benefits and that to minimise the financial burden was covered under such recovery were allowed to repay the amount by instalments, or to adjust the block year of Bharat Darshan against the current if available and that recover all income tax as also a matter of adjustment. For all these reasons it is contended that the claim being devoid of substance be dismissed with compensatory costs. By way of Rejoinder (Exhibit 8) the Association reiterated the contents in the Statement of Claim and opposed the Written Statement.

4. On the basis of the pleadings my Learned Predecessor framed issues as (Exhibit-10). Vice-President of the F.C.I. Employees Association Mr. Subhash Sakhara Kesarkar filed affidavit (Exhibit-11) and closed evidence vide purshis (Exhibit-12). On behalf of the management Deputy Manager Mr. M. S. Rane, filed affidavit (Exhibit-13) and closed evidence orally.

5. Management filed written submissions (Exhibit-14) and the Association (Exhibit-15). On hearing the Learned counsels and perusing the record and the written submissions, I record my findings on the following issues for the reasons recorded below :

Issues	Findings
1. Whether the action of the management of F.C.I., Mumbai cancelling the order of encashment of L.T.C. in case of 16 employees is justified	Yes.
2. If not, what relief the workmen are entitled ?	Does not survive.

REASONS

6. Admittedly the employees of Food Corporation of India are allowed to avail the facility of Bharat Darshan (LTC) for the block years of four years. It is seen from the record the employees were given the facility for the block of 1986—89, during the extended period up to 1990 as one time exemption only for the block of 1986-89, by the clarificatory letter dated 11-12-89, (Exhibit-9/2). This letter clearly speaks that the facility for the block of 1986—89 was extended for one year in 1990 and it does not speak anywhere that, it is to be continued as routine. The intention for giving exemption as above was disclosed in that letter, i.e., the Memorandum of Understanding was signed on 23-3-89 and the block of 1986-89 was at its lag end of the

block year and in order to ensure that each and every employee even at field level may be able to get the reimbursement. This shows that the facility of Bharat Darshan (LTC) was to be availed for the block year of four years and was not to be extended. The Vice President of the F.C.I. Employees Association Mr. Kesarkar, admits in cross-examination, para. 9, that the union, who had espoused the cause was party to the circular dated 25-4-89 (Exhibit-9/1). Clause-4 of this circular which binds the union, nowhere speaks that the facility was to be extended even after four years. When the clarification provided in the Head Quarter Circular dated 11-12-89 (Ex-9/2) was exclusively applicable for the block of 1986-89 extended upto 31st December, 1990, question of extending the facility of Bharat Darshan (LTC) again for further block of 1990-93 in 1994 does not arise.

7. It is seen from the record, the zonal office without prior clarification allowed the employees to avail the L.T.C. facility for extended period, which was not within their competence. It is further seen from the record three employees at serial No. 5, 8 & 9 in the schedule had refunded the disputed amount, and on the same line, the rest of the employees are also liable to refund the amount which they took as per the incorrect advise of the Zonal Office.

8. The Learned Counsel Mr. Anchan for the union submits that the management extended the facility for one year in 1990. On the same analogy, they should have extended again for one year i.e., upto the year 1994, as the circular dated 25th April, 1989 is vague and not clear therefore there is scope of interpretation of extension of one year. I am unable to accept this submission, for the simple reason that the concession of LTC is for the block year of four years, thereby it should be availed within four years only. The management it is seen considering the circumstances prevailing in 1989 by clarification dated 11-12-89 had extended the period of one year in the year 1990. Nothing on record to show the circumstances warranting again to extend the period. The fact that the facility was extended earlier for some reasons, the zonal officer should not have without any competence to allow the facility in contravention to the M.O.U. and circular dated 25-4-89. In view of the position, obviously the action of the management cancelling the order of encashment of LTC (Bharat Darshan) for the block years 1990-93 to be extended upto 1994, in case of the employees in list enclosed, can said to be totally justified. Consequently the concerned employees are liable to refund the amount of LTC. The issues are answered accordingly and hence the order:

ORDER

The action of the management of Food Corporation of India, Mumbai, cancelling the order of encashment of LTC (Bharat Darshan) in case of sixteen employees as per list enclosed is justified.

S. N. SAUNDANKAR, Presiding Officer

गृहि-पत्र

नई दिल्ली, 7 नवम्बर, 2001

का.आ. 3229.—इस मंत्रालय के दिनांक 3-7-2001 के का.आ.स. 1863 के द्वारा भारत के राजपत्र भाग-II, खण्ड 3(ii) में प्रकाशित दिनांक 3-7-2001 की सप्त-सदस्यक अधिसूचना के बाध्य 7 व 8 में आये 'केन्द्रीय रेशमकीट पालन अनुसंधान और प्रशिक्षण केन्द्र-बाध्य' को "अध्यक्ष कमांडर मण्डल के के जी उप क्षेत्र, बंगलूर-560001" को पढ़ा जाये।

[फा.सं एल 14012/98/98 आई आर (डीय)]

कुलदीप राय वर्मा, डेस्क अधिकारी

CORRIGENDUM

New Delhi, the 7th November, 2001

S.O. 3229.—In this Ministry's Gazette Notification of even number dated 3-7-2001 published in Part II Section 3(ii) vide SO No. 1863 dated 3-7-2001 the name of the management "Central Sericulture Research and Training Centre" appearing in 7th and 8th sentence may be read as the "The Chairman, Commandar H.Q., KKG Sub-Area, Bangalore-560001."

[F. No. L-14012 98/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

नई दिल्ली, 8 नवम्बर, 2001

का.आ 3230.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 दिसम्बर, 2001 की उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 अध्याय 5 और 6 [धारा 76 की उपधारा (i) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपरान्त राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होगे, यर्थात् —

"जिला बाड़मेर, तहसील पंचपदरा के राजस्व ग्राम जमोल एवं तेषावास के खसरा संख्या-127, 130, 131, 132, 133, 135, 136 व 137 के अन्तर्गत आने वाले क्षेत्र"।

[संख्या एस-38013/22/2001 एस.एस(I)]

के सी जैन, निदेशक

New Delhi, the 8th November, 2001

S.O. 3230.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st December, 2001 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been

brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely :—

"The areas comprising the revenue villages of Jasol and Lemawas Khasra Nos. 127, 130, 131, 132, 133, 135, 136 and 137 of Tehsil Pachpadra in District Barmer."

[No. S-38013/22/2001-SS.1]

K. C. JAIN, Director

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